



A&R. Promises, Promises

Proprietary estoppel cases have accelerated in the last few years, with a number of cases reaching the High Court. That trend is only likely to continue as media reporting raises their public profile.

Another important message that emerges from the recent line of cases is that proprietary estoppel claims are not reserved for post-death challenges (although this is often when the issue of proprietary estoppel arises) but are now more frequently being pursued pre-death. It should be remembered that contentious trust and probate work is not exclusively a post-death exercise.

A perception also exists that such cases are easier to bring, which is not wholly unwarranted - proprietary estoppel is often an alternative remedy to other types of claim, such as a validity claim in relation to a Will or a claim under the Inheritance (Provision for Family and Dependents) Act 1975.

The evidential threshold for setting aside a Will on grounds of validity, for example, is a high one, reinforced by a judicial reluctance to invalidate a Will but the Claimant may find it easier to persuade a court that it has an equity in property if the facts support a case.

Before looking at some recent decisions, it is worth reiterating the essential elements that are required to establish a proprietary estoppel action. These are:-

- There must be a promise or assurance or representation made (to the recipient) that they will receive something. This is very often land (i.e. a farm or part of a farm) but it can also be other assets.
- The recipient must rely on the promise. The reliance must be reasonable, i.e. there must be a causal connection between the promise and the reliance that is underscored by a tacit understanding.
- The recipient must have suffered detriment in relying on the promise. Detriment can take many forms both of a monetary and non-monetary nature.

Some recent cases illustrate the nature of the remedy.

Davies & Another v Davies [2016] EWCA Civ 463

This is the well known 'Cowshed Cinderella' case. The farmer's daughter had, as a result of her parents' representations, formed a number of expectations over a period from 1985 (when she was in her late teens) to 2012 when she left the farm, that she would inherit the farm and business (worth c.£4.4m). This was based on variable representations and assurances made over the years.

The court accepted she had an equity in the farm and the farming business but the question was one of quantum: what should the daughter receive for her detriment? The initial award was £1.3m but on appeal this was reduced to £500k to properly reflect the value of her expectations in relation to inheriting the business, her disappointment at not inheriting the land and her non-financial detrimental reliance.

Moore v Moore [2016] EWHC 2202 (Ch)

In this case a son claimed an equity over his father's share of the farm and farming business operated by the farming partnership. His case was that, from an early age, his father had told him that the farm and the farming assets of the partnership would one day be his.

His father had sadly contracted Alzheimer's in his later years and with his health significantly deteriorating his son increasingly ran the farm single handed. At the same time disputes arose as to how the farm should be managed culminating with the father making a Will which cut his son out of inheriting the farm.

The son was awarded his father's share of the farming assets, as well as all associated cash. The farming partnership was dissolved because of the father's dementia. However, the son's parents were allowed to continue occupying the farmhouse at the son's cost, and receiving an income of £200 a week from the business, for as long as they need.

Habberfield v Habberfield [2018] EWHC 317 Ch

Another inter-generational farming dispute. A farmer's daughter alleged she had been promised the family farm (the 220-acre Woodrow Farm, at Mudford near Yeovil) after having worked on it for little reward and having devoted her life to helping run the farm.

Her mother, who survived and inherited the farm on her husband's death, contested the claim. The claim to the entire farm was not upheld (principally to avoid breaking up the farming business) but an award of 45% of the farm was made, represented by an Order that the daughter be paid £1.7m.

James v James [2018] EWHC 43 (Ch)

This case illustrates the fact that each case is decided on its facts and that not all cases succeed.

The deceased farmer's son brought a claim to the farm (worth £3m) based on alleged promises. However, the court found that any statements made by the deceased were statements of intention to leave property by Will, not a promise or assurance that were made with an intent they should be relied upon.

Consequently, the son had failed to prove any assurances or promises had been made. Further, he had been properly paid the going rate for farm work, had been bought cars, had occupied a property rent-free, had been made a partner in the family business and had received some land, cash and a haulage business from the deceased. As a consequence he had failed to prove any detriment and his claim failed.

Thompson v Thompson [2018] EWHC 1338 Ch

This is another farming case brought in the lifetime of the promisor, where the High Court found the son to be entitled to inherit a family farm and farming partnership share.

After the father's death the relationship between the son and his mother (and his siblings) deteriorated to the extent that the mother wanted to pass her share of the farm and farming partnership to her daughters.

However previous promises and assurances had been made that the son would inherit the entire farm and business, in reliance upon which the son had, from leaving school in 1979, worked on the farm for long hours and with few holidays, for minimal pay plus accommodation. The mother's actions prompted a claim by the son to enforce his rights.

The court ordered that on his mother's death, the son will inherit the entire family farm (115 acres) and his mother's farm partnership share. In a similar vein to Moore v Moore the court ordered that in the interim the mother would be permitted a life interest in the farm business and a right to reside for life in the farm property.

Gee v Gee and another [2018] EWHC 1393 (Ch)

From the late 1980's, the son's father had made it clear that his son would succeed him to the farm business. This was to encourage the son to farm the land and later promises were made to keep the son on the farm. In reliance, the son worked long hours for inadequate compensation, giving up the chance to work elsewhere. Subsequently, after a deterioration in the relationship, the father transferred his interest in the family company that controlled the farm to another son.

The High Court found that the father had resiled from his promises and ordered a transfer to the son of a 52% shareholding in the family company and a 46% interest in farmland which enabled the son to control the family company with a view to putting him in the position to buy out his siblings' property interests.

It is likely that these cases will only continue to populate the courts and the media – they provide both a soap-opera story of inter-generational feuding, fights over valuable assets and high stakes litigation.

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