Guest and another v Guest [2022] UKSC 27 – "Proprietary Estoppel: Expectation vs Reality"

By Rachel Bale
3PB

On appeal from [2020] EWCA Civ 387

Introduction

Lord Briggs recently handed down judgment in the Supreme Court in the case of *Guest and another v Guest* [2022] UKSC 27, which discussed the correct approach in calculating the type and amount of equitable relief to be awarded where proprietary estoppel has been made out. This case involved a family dispute over, Tump Farm, a working dairy farm which has been owned by the Guest family since 1938.

An interesting aspect of this case is that the court had to consider how to deal with promises of *future* inheritance where the promisor is still alive. As is often the case with familial issues, the solution is not necessarily clear-cut…

Background Facts

The Claimant **("Andrew")** is the eldest child of the Defendants **("David" and "Josephine")** who owned the farm. David and Josephine have another son **("Ross"),** who is also a farmer, and a daughter **("Jan"),** who did not farm.

Andrew lived and worked on the farm with his parents for some 32 years after leaving school in 1982, with increasing responsibilities. He was paid for his work but at relatively low rates.

Andrew had been promised by his parents that he would inherit a substantial but unspecified share of the farm, sufficient to enable him to continue a viable farming business after David's death. However, in fact, his parents had made wills in 1981 providing for him and Ross to inherit the farm in equal shares subject to financial provision of 20% of the estate for Jan.

Unfortunately, relations between Andrew and his parents deteriorated. In May 2014 David and Josephine made new wills removing Andrew's inheritance. Worse still, in April 2015 they dissolved their farming partnership with Andrew and gave him notice to quit the property on the farm in which he and his family lived.

In 2017, Andrew sought a declaration of entitlement to a beneficial interest in Tump Farm under the principles of proprietary estoppel.

Decision at First Instance

The trial judge ruled in Andrew's favour, finding that Andrew had continued to work on the farm for little financial reward because he reasonably relied, to his detriment, on various assurances made by his parents as to his future inheritance of the farm. He thereby satisfied the conditions for the estoppel to arise.

The trial judge ordered the parents make an immediate payment of £1.3 million (subject to certain adjustments) to Andrew to satisfy his *expectation* as to what he would have inherited. This was calculated as 50% of the value of the dairy farming business plus 40% the value of the freehold land and buildings at the farm. The consequence of that order was that Tump Farm would have to be sold now in order to realise the lump sum payable to Andrew.

Decision of COA

Before the Court of Appeal, the parents argued that the trial judge had been wrong to fashion the remedy based on Andrew's *expected* inheritance. They argued that the award should instead have been calculated by reference to Andrew's contribution to the value of the farm or his loss of opportunity to work elsewhere. They also argued that the remedy wrongly accelerated Andrew's expectation, as he had not expected to receive an interest in the farm until his parents' death.

The Court of Appeal dismissed the appeal finding that it was appropriate to order a remedy by reference to Andrew's expectation.

Decision of Supreme Court

The Supreme Court was asked to decide on two core issues:

(1) Whether a successful claimant's expectation, in this case of inheritance of a family farm, was an appropriate starting point when considering a remedy; and

(2) Whether the remedy granted, namely payment of a lump sum which would in effect result in the sale of the farm, went beyond what was necessary in the circumstances.

By a majority of 3:2, the Supreme Court allowed the appeal in part, providing guiding principles rather than broad-brush lines as to how to approach the quantification of equitable relief. Lord Briggs set out the following considerations:

(1) The starting point that the court should start by determining whether going back on the promise is ***unconscionable*** in the circumstances.

(2) If it is, then the court should then proceed on the assumption that the simplest way to remedy that unconscionability is to ***enforce the promise*** to transfer the property in question. Therefore in the absence of any below factors, the likely remedy will be the expectation of the promise.

(3) However, the court may have to ***consider alternatives*** such as providing a monetary equivalent, for example if the property has been sold or if its transfer would cause injustice to others.

(4) One such consideration is if the remedy involves acceleration of a future promised benefit, it will generally require a ***discount for accelerated receipt***.

(5) Also, if the enforcement of the promise, or monetary equivalent, would be out of all proportion to the detriment to the promisee, then the court may need to ***limit the remedy****.* However, the focus is not on the need to precisely compensate for the detriment to the promisee.

(6) Finally, the court should consider in the round ***whether a particular remedy would do justice in the circumstances***, by considering whether the promisor would be acting unconscionably if they were to confer the proposed benefit on the promise.

Essentially, for the parents in the present case, the Court found that they ought to be able to choose between either putting the farm into trust in favour of their children or paying a lump-sum compensation to Andrew now, but with a reduction to properly reflect his earlier-than-anticipated receipt.

Interesting to note and showing the divergence of outcomes which can exist when applying equitable principles, Lord Leggatt and Lord Stephens dissented to this approach, finding they would also have allowed the appeal but on substantially different grounds, namely that the focus ought only to be compensation for the detriment suffered on relying on the promise. In this way, they would have awarded Andrew £610,000 in compensation for his ‘detriment’ of caring for the farm.

Implications of this judgment?

In short *Guest v Guest,* is a classic application of equitable principles taking a flexible and somewhat fluid approach to quantification in order to balance the injustice to each party, in this case the promise to Andrew promise not being fulfilled and the financial hardship his parents would face in selling the farm.

Further it has gone some way to provide guiding principles for judges when quantifying equitable relief in order to redress a familial situation where proprietary estoppel exists. However, as indicated, this will always be fact-specific dependant and the overall remedy will be affected by factors such whether someone is attempting to recover their ‘expected inheritance’ earlier than anticipated or limited in the fact they have only incurred small financial or emotional expenses in reliance of the promise.

The key take-away for those advising clients is that the courts will always be focussed as to the ‘unconscionability’ suffered by promise and are looking to redress this in the most equitable way in consideration of all the circumstances. Thereby if your client has been provably promised a large compensation and detrimentally relies on this, they will likely be awarded their promise accordingly.

In this way, expectation can indeed become a reality – so be careful what you promise!

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23 November 2022

Rachel Bale

Barrister
3PB

01865 793 736
rachel.bale@3pb.co.uk

3pb.co.uk