

Supplementary Notes to proprietary estoppel talk - 8th October 2019.

Case notes.

A reading of these cases will reveal both the minutiae of detail to be considered in litigating in this area.

(1) Suggitt v Suggitt [2011] EWHC 903 (Ch) - 7 day trial

C was not considered a reliable witness (indeed, para 38 of the judgment is scathing)

"I regard John's case and evidence in support as weak. But enough is enough...." [para 57]

Father died in 2009, an elderly man farming 400 acres.

C (John) went to boarding school from 1988 to 1997, and thereafter agricultural college (to 1999).

By the time of graduation, C (noted not to be a diligent student) was working on the family farm.

C received 'no wages, no share, nothing', but in return overlooked that father paid everything for him: his food, board, Lodging, college fees, living expenses and gave him a share of the grain harvest ('sweepings' - £4,700) and sheep sales (£5,000). In addition, C was permitted to run his own herd of beef cattle and benefitted thereby to the tune of £12,000 (para 15).

Father was ill, pancreatitis and in the mid 1990s had recruited a Mr. Teasdale to assist, but by November 1999 this arrangement ran into difficulty, and C wanted input, but father took the view that C was not fit to run it and rebuffed the attempts, and the farm's management was put out to tender through an agent. C's bid (verbal) failed.

Notwithstanding an inheritance of £38,000 from an aunt, C's resentment continued and in 2002, he surrendered the 50 acres he farmed rent free from his father, and went not live in York.

By late 2002, the farm now under management, C returned home having dissipated his inheritance but lived in another farmhouse, again, free of expense and working in a pub in the evening.

On his return, C worked for his father in a number of guises including the 2 year renovation of a farm property, but it is fair to record that this was not his sole occupation of his time.

The evidence on promise

These statements included: "no farmer pays their son, as it will all be theirs one day", that he was sent to agricultural college so learn skills "to run the farms in the future" and when his ideas for running the farm were rejected, "you can do what's you want when the farm is yours".

Described as “opaque to say the least”, “not strong”, repeatedly conflicting with statements made by the father to others, father’s refusal to change his will and father’s apparently regard of C as “lazy”.

However, the judge went on:

“These actions however are by their very nature full of ambiguities and conjectures and the authorities clearly show that all due allowance has to be made for context. It was also not always readily apparent whether what Frank was expressing was his intentions or wishes as opposed to a statement of something he definitely would do” (para 46).

One witness however inadvertently supported C by stating that father wanted C to prove himself before passing the farm on, and the judge noted the way that he never actually gave up on him: he took him back into the fold (and his partner, Gemma, and delighted in his grandchildren), supported him, returned 30 acres to him in 2006 so that C could start up a new farming venture.

The court accepted that unconditional promises were made.

On appeal the following points are re-iterated:

1. Where there is doubt as to whether assurances have been given then the court may wish to look for confirmation to the strength of the evidence about reliance and detriment.
2. That reliance and detriment, overlapping, still need to be satisfied individually.
3. Reliance need to be real to the extent that it must be of sufficient quality to justify the weight placed upon it.
4. It was a matter for the judge at first instance to determine whether or not detriment is substantial there must be a sufficient causal link etc (see powerpoint under ‘detriment’) but that importantly, C was found to have “...positioned his whole life on the basis of the assurances given to him and which were reasonably believed by him”. As Arden LJ duly noted:

“I have no doubt the judge carefully considered his words”

(2) Thompson v Thompson [2018] 1338 (Ch) - 5 day trial

“Although this is not a case where it is possible to pinpoint a specific occasion on which this promise or assurance was given, I am satisfied that it is a very long standing promise or assurance, repeated within the family and to Gilbert, (and others) on many many occasions from when he was fairly young and starting to work full time on the Farm. I am satisfied that these promises or assurances were made by both Parents consistently over time...clear and definite.” (Para 149).

Gilbert born in 1963.

Left school at 15 to work full time on the family farm, paid £20 per week rising to £40 pw at the age of 19/20 rising to £70 pw, in addition to which he received board and lodging.

Judge accepted that he worked 7 days a week for up to 18 hours a day, albeit with varying workloads, and holidays were few and far between.

Gilbert said that his path to working on the farm had been encouraged by his parents and that he fulfilled that expectation.

In 1989, the farm was sold and the proceeds reinvested in a new farm, but by this time each of G's sisters had moved away.

Profits were "ploughed back" into the business with various parcels of land acquired.

In 1992, parents left all their interest and estate to each other under mutual wills.

In 1994, the parents and G entered into partnership whereby G was required to devote his full time and attention to the business. This, the judge said, recognised his importance and position, and the 'gift' was a partial implementation of a promise of inheritance in due course.

There was evidence from the partnership accountant of a note in the following terms:

"...very strongly of the view that Gilbert is the one who must be looked after and that as long as he wishes to farm he should be allowed to do so...."

And further evidence of a meeting where it was clear that Gilbert's ability to farm trumped the notion of equality between siblings, and subsequent draft wills are consistent with a majority interest passing to G.

Mr. Thompson died in August 2012. G would have been 49 at this time, having committed 34 years of his life to the farm and its business.

From there, matters in the family deteriorated to the point of considerable ill-feeling (2014). Mrs. Thompson now wished the whole family to benefit from the farm, had asserted that G had breached the terms of the partnership agreement (he said that he was excluded and that he was ill).

G's evidence was that he was 'destined' to be a farmer, before acquisition of the farm, and this knowledge led him not to secure qualifications. His parents were proud of him and referred to an occasion when his mother said that he had been marked out to work on the farm, and he explained the long hours, and also his other roles including paperwork, disputes etc

On the issue of the promises, it was interesting that the judge noted:

"I heard a certain amount about family quarrels. I have averred to the ill-feeling caused by Pauline staying on so long at the farmhouse. There were also disputes between Karen and Pauline in which Gilbert got involved. I also heard about the grass cutting incident leading to Gilbert disappearing for a day. I also heard about more recent years, the circumstances in which he and Sue left the farmhouse after little more than five months of living there and the later period in which Gilbert had been ill and/or felt excluded from the Farm such that he has

not been working there. None of these matters, even if resolved against Gilbert, would in my view affect the questions of whether representations, assurances or promises had been made to Gilbert;...” (para 100).

(3) James v James [2018] EWHC 43 (Ch) (8 day trial)

C disputed the will of his father leaving him nothing, but the estate to his mother and two sisters. The PE claim was secondary and C had received land and a haulage business from his father.

C worked on the farm, he claimed at reduced wages (court ruling that he received the same as other farm workers or more), plus he was given cars as a bonus to his salary. It was accepted that he had worked hard (it was in his nature to do so), but he also lived rent free and there was no evidence of him thinking of moving away to forge another career.

C, found to be unreliable unless corroborated.

C unable to give evidence of a particular promise creating an expectation. There was a hope and belief on the part of C that he would inherit the farm one day.

Evidence in fact was advanced that the deceased wanted to keep all his assets in his own name as long as he could, and for this reason would not have made a promise to transfer property. Furthermore, there were numerous records to the effect that the testator would not be swayed if he had decided not to discuss his future intentions.

The solicitors' file has recorded promises to others but not C.

On the issue of assurance, the finding of the court is instructive, especially when compared with *Thorner, Suggitt and Cook* (supra):

“The high point of Sam’s case in relation to an assurance was his evidence that, before buying further land...the testator asked Sam whether he should buy it, because (as Sam put it) “I would be farming it one day”. I accept that the testator said words to this effect to Sam, at least twice...In the context in which it is made, and given the personalities of the two persons involved (the testator, reluctant to make any commitments, and Sam,, keen to inherit his father’s property as the only son), I do not find this phrase to amount to a promise or assurance to leave the property to Sam. As with making a will, saying that it is your intention to do a thing is not all the same as promising to do it.

In my judgment, the use of this phrase by the testator in this context merely signified that he realised that one day he would die, and he would have to pass the property on to the next generation, and – at the stage at which the testator was talking, at least – Sam was the obvious person to whom to leave the property on death” [paras 33 and 34]

The Court expressly rejected the submission that this was a case in which C had positioned his life on the basis of assurance or promise.

(4) Cook v Thomas [2010] EWCA Civ 227.

C instituted possession proceedings against her daughter, Pauline.

C and husband moved to the farm in 1959. Pauline lived at the farm from the age of 9 until her marriage, and helped on the farm, particularly with milk, and eventually took over the milk round from him. She also operated riding stables and later (1970-1984) a riding school there.

1990 - Pauline marries D2 sparking a rift in the family which was not reconciled until 1995 when all parties attended the funeral of C's husband.

1996 – Ds sold their mobile home, purchased a new one, and moved onto the farm, but following its damage in a storm moved into the farmhouse (then dilapidated), which they subsequently repaired. Their case was that between 1996 and 2001 C's used words and conduct such that she was no longer entitled to deny a right to live in the farmhouse and to farm the land for so long as they wished. These promises related to:

- (1) The stationing of the mobile home was in return for looking after C's well-being, providing company, and making her feel safe, taking over the farming business and undertaking improvement to the house.

C's case was that she permitted to reside on the land and to farm because she had no interest in farming.

- (2) That following D2's retirement, C asked if he would undertake all of the major restoration works. This was also repeated in relation to the consequences of the storm damage.
- (3) The third promise. "You know this is going to be yours when I'm gone anyway". The judge found this proved "*substantially along the lines of that alleged*", yet dismissed the earlier allegations of assurance.

Notably, Ds' counsel suggested (correctly) that the formulation of wording was virtually identical to that used in *Gillet v Holt*, but Lloyd LJ noted that the context here is different: D was the only child of the deceased, and it would otherwise be only natural for her to inherit in the usual course of events.

In other words, it is similar to those cases of an expression of testamentary expression.

(5) Moore v Moore [2016] EWHC 2202 (Ch) - 9 days

In mid 1960s, R+G ran a farm (gifted by father in 1966) as partners, taking modest drawings and buying further parcels of land.

G had 2 sons, neither of whom worked on the farm, save seasonally.

C (Stephen) was the son of R, and was born in 1967 and had worked on the Farm since childhood, initially at weekends, evenings and in school, then in college holidays and subsequently full time.

C became a salaried partner in 1998, previously earning £200 per week for a 45-50 hour week, (100 hours during harvest), but this increased to £590 a fortnight, paying £190 a month into a pension. These were similar in drawings to R+G, and in 2003/2004 he became an equity partner, sharing in the profits.

G retired from the business in 2008 thereby terminating the partnership. To the surprise of R, G sold his interest to C for £500k.

In 2008, a company was set up based upon tax advice and farming assets were transferred to the company, paid for by Director's loans, which in turn would be paid for by company profits. The shares were held by R and C in the proportions 51:49% respectively.

The further details of the claim (which are substantial) are familiar, and you are invited to read the judgment, however on the issue of detriment, the trial judge noted:

"I also accept that Stephen relied on the promises by basing his life on the Farm, and by working on the Farm, without any consideration of any alternative employment, because he truly believed, as he had been encouraged to believe, that in the fullness of time he would inherit the Farm and the Business. I expect that Stephen is right when he says that he would have worked as he did for only modest payments not would he have carried on living in a bungalow...the fact is that promises were made, and in reliance on them he devoted his entire working life to the Farm and the business." [para 148]