Proprietary estoppel: Quantifying an interest

13 JUNE 2016

Michael Gouriet
PARTNER | UK

CATEGORY:
BLOG

In May 2014 I wrote a blog about the dairy farming case of Davies v Davies [2014] EWCA Civ 568 (click here to view). Almost exactly 2 years later, the Court of Appeal judgment quantifying Eirian's claim has been published. The essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result. The judge at first instance found that the appropriate equitable relief would be a financial award to Eirian from her parents, rather than a transfer of property, licence to occupy or interest in the farming business. Whilst neither party questioned that decision, Mr and Mrs Davies appealed the amount. They had offered their daughter £350,000, but the judge decided that they should pay £1.3m. The Court of Appeal ruled that the award was too high, and instead ordered them to pay £500,000. The Court of Appeal paid particular attention to Eirian's expectations during her relationship with her parents. Unlike many other proprietary estoppel cases, there was not a consistent promise or assurance that was relied upon by the claimant. In this case Eirian had at different times expected different things: to inherit the farm and land; to succeed her parents in running the farm when they retired; to attain an interest in the farming partnership; or to attain a shareholding in the family company. Some of these expectations were relatively short lived — for example Eirian acknowledged in evidence that she effectively gave up any notion of inheriting the farm when she chose to marry against her parents' wishes in 1989. The Court of Appeal confirmed the requisite ingredients of proprietary estoppel as being (a) an assurance (promise) of sufficient clarity, (b) reliance by the claimant on that assurance and © detriment to the claimant in consequence of reliance on the assurance. Lewison LJ approved of the idea that there should be a sliding scale by which the clearer the expectation, the greater the detriment and the longer the passage of time during which the expectation was reasonably held, the greater would be the weight that should be given to the expectation. Given this was a case where expectations moved significantly over time, and where the Court of Appeal emphasised the need for proportionality of remedy sought to detriment suffered, it is un surprising that the Court concluded that the original award of £1.3m was too high. The Court has to look at both expectation and detriment to find a proportionate solution — if the detriment is minimal but the expectation large, it would not be proportionate to fulfil the claimant's expectations. In this case, many of Eirian's expectations were short lived, and the detriment relatively small. For example, whilst the Court of Appeal accepted that Eirian had suffered a detriment by giving up her job outside of the farm, which she enjoyed and where she was better paid and had shorter working hours, it was not an irretrievable detriment. She was young enough to get another job and fulfil her ambitions elsewhere. During the period when she expected to be made a partner, the partnership made a profit of £21,419 (in 1997) and a loss of £9,609 (in 1999) These factors should be reflected in the amount of her award. The Court of Appeal took quite a mathematical approach to calculating the award. It looked at the following heads in quantification of the award: accommodation element (Eirian had been promised she could live in the farmhouse for life); partnership element (profits to which she would have been entitled between during the period she expected to be partner); company element (share of the profits made by the company for the period she expected to be a shareholder); compensation for underpayment for the work Eirian had carried out on the farm in the early years; and finally the non-financial aspects of detriment, such as the disappointment of not inheriting the land. Having considered all those elements, the court decided that £500,000 was the right amount. It is interesting that with all the same facts and evidence as the trial judge, the Court of Appeal came to a figure £800,000 lower. As I said in my earlier blog, uncertainty is inevitable in these esoteric cases, and it is clear from reading the judgment that when the court has such a wide ambit of discretion there are wide boundaries within which decisions can be made. Michael Gouriet and Jemma Thomas

Authors

Michael Gouriet

PARTNER | LONDON

Divorce and family

+44 20 7597 6125

michael.gouriet@withersworldwide.com