



Latest developments in proprietary estoppel

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Basic principles



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- 3 main ingredients: representation; reliance; detriment
- Unconscionability
- Wide discretion in satisfying the equity



Fielden v. Christie Miller [2015]
EWHC 87 (Ch)

Can a representation capable of founding a proprietary estoppel be made by 1 of 3 trustees?

The unanimity principle



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- Unless provided to the contrary in the trust instrument, trustees must act unanimously
- Need to plead agency?



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"Elementary fairness requires that before a person can be bound by the acts of another purporting to act on his behalf, that other must have authority to bind him in the matter. Whether he has will depend on the usual principles of agency. This applies, in my judgment, as much in the field of estoppel as it does in other contexts."

The Non-Fettering Principle



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"When the power is fiduciary, the donee must exercise his judgment according to the circumstances as they exist at the time ... Any form of undertaking as to the way in which the power will be exercised in future will be ineffective."

Tentative conclusion



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- Principle does not defeat proprietary estoppel claim because of flexibility of remedy
- In any event a novel point not suitable for strike out

Detriment



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Davies v. Davies [2014] EWCA Civ
568

The "Cowshed Cinderella" case
Preliminary issue hearing!

Forensic accounting?



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Does the claimant need to prove that if she had pursued an alternative career her earnings would have been greater?

Detriment is not purely financial



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" The judge had to determine whether there was substantial detriment by contrasting the rewards of the job at Genus with its better lifestyle with those of working on the farm (including the free accommodation ...) with its greater burdens in terms of working hours and more difficult working relationships"

Detriment (again)



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Southwell v. Blackburn [2014]

EWCA Civ 1347

- Detriment not counterbalanced by rent free accommodation
- "*arithmetical accounting exercise*" not appropriate in quasi-matrimonial case



Davies v. Davies [2016] EWCA Civ 463

The quantum hearing!

1st instance award: £1.3m

On appeal: reduced to £500K

Essential feature of the Davies case



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“...a series of different (and sometimes mutually incompatible) expectations, some of which were repudiated by Eirian herself, others of which were superseded by later expectations”

What is the court's aim?



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- Satisfying expectation or compensating detriment?
- “Logically, there is much to be said for the second approach”
- “Fortunately, I do not think that we need to resolve this controversy on this appeal”

Jennings v. Rice



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- Implicit in Walker LJ's quasi-bargain analysis (where court is likely to vindicate C's expectations) that C has performed his part of the bargain
- Where expectations are uncertain, expectations are a starting point – but what does this mean?
- Mr Blohm's sliding scale

The calculation of £500K



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- Accommodation £180K
- Partnership element £22K
- Company element £120K
- Underpaid wages £28K
- “modest” amount for disappointment
- “modest” amount for giving up ability to work shorter hours in better working environment

What next?



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- Permission sought for appeal to the Supreme Court