



Estoppel and detrimental reliance: cracking the golden egg

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Adam Boyle, a Pupil Barrister of St John's Chambers' Commercial and Chancery team looks at the recent case of *Davies v Davies*.

The case of *Davies v Davies*¹ has recently exercised the judgement of the Court of Appeal. The facts of this case centre around a Welsh farming family, the Davies, and the comings and goings, interactions and representations of two parents, Tegwyn and Mary Davies, and their daughter, Eirian.



The Facts

The factual matrix in this case is too rich and too involved to recount in full but can be briefly summarised thus. From a young age Eirian, unlike her siblings, showed a real and passionate interest in farming. By the time she was 21, in 1989, Eirian had been working hard on the family farm for years, and had a real love of pedigree milking, which was, and is, the farm's main business. By 1989 Eirian was the only sibling left on the farm. However, despite being well beyond school age Eirian was not paid for the work that she did but received assorted benefits in the form of board, lodging and some money instead. When Eirian would ask her mother, who held the family purse strings, about money, her mother would reply that she should not "kill the goose that lays the golden egg". Other representations were made to her while she was young, Eirian's father said that one day the farm and business would be hers.

From 1989 onwards Eirian and her parents fell out numerous times over Eirian's relationship choices. They fell out when she was married at 21 in 1989, and later were reconciled. In 1990, 20 acres were sold to Eirian so she could raise her own livestock on part of the farm. In addition to having her own cattle, and after a hiatus of approximately two years, Eirian continued to work on her parents' farm. For some of this, her milking work, she was paid at a rate of £15 per day. For her other work, including veterinary work and general farming, she received no pay.

Over the years Eirian proceeded to move in and out of properties which were owned as part of the farm, often as a result of fall-outs and arguments with her parents. In 1998

¹ [2014] EWCA Civ 568

Eirian signed a partnership agreement which she believed secured her long-term interest in the farm, however, for one reason or another, her parents never signed it. In 2002 her parents made wills that left the farm to all of their children in equal shares. Eirian also ceased, and recommenced, working on the farm numerous times. In 2007 Eirian was working as a technician for a firm called Genus and had completely stopped working on the farm. However in 2008 she was tempted back by the promise of a shareholding entitlement in the farm and a fixed salary. In 2009 she was shown a draft will leaving her the land and buildings of the farm and a share in the company, but her parents continued to redraft their wills and ultimately decided to place the farm into a trust with the residue to be split between all their children equally.

More generally, Eirian claimed that numerous representations concerning her interest in the farm were made to her over the course of many years.

In 2012 a physical fight between Eirian and her father led to the final termination of Eirian's employment and the commencement of proceedings to evict Eirian from her home in a farmhouse owned as part of the farm. As part of her defence Eirian claimed an equity in the farm/farming business which was based on her detrimental reliance upon the representations made to her by her parents.

The proceedings

A split trial was ordered by DJ Godwin to decide first, in essence, whether on the facts an enduring equity in the farm arose, then second, to be decided later, what the nature and extent of that equity was.

The decision at first instance

HHJ Jarman, after the trial of the preliminary factual issues, declared in an order that Eirian had, 'established an entitlement to a beneficial interest in the farm and/or farming business under the doctrine of proprietary estoppel'.

HHJ Jarman also found that the sum total of the benefits which Eirian had received from her work on the farm was less than full recompense for her work. Therefore her reliance on the representations made to her was found to be, in fact, detrimental. As is required for the equity to bite.

The appeal

HHJ Jarman's decision gave rise to an appeal. His order had, to a small extent, particularised the nature of the equity involved by describing it as a beneficial interest in the farm and/or farming business. That being so, the Court of Appeal found that HHJ Jarman had overstepped his remit in relation to the preliminary issue. The trial of the preliminary issue was to decide *whether* there was an equity, not *what* that equity was. Therefore the appeal, in that regard, was allowed.

The parents' legal team also sought to appeal the decision more generally, and asked the court to revisit the question of whether there was any substantial detriment incurred by Eirian as a result of her reliance on the representations made by her parents.

Issues were also raised about which representations Eirian could be taken to have relied upon at various points in time. In short, the Court of Appeal found that HHJ Jarman had been entitled to find that there was substantial detriment to Eirian and that the detriment Eirian incurred was as a result of reliance on the representations made to her.

The Court of Appeal's reasoning

Loosely put, there were four cornerstones of the Appellant's argument on appeal. First, that in leaving the farm at various points and ceasing work on it Eirian showed that she had not been relying on the representations that had previously been made to her. Second, that her relationship with her parents changed after she left the farm and came back such that prior representations could not be relied upon when she returned. Third, that a lack of an *express* finding by the judge of a representation in relation to a period entailed that there could be no detrimental reliance in that period. Fourth, that the finding in relation to detriment was that Eirian suffered only a financial detriment, and that she had not proven that she was in fact financially worse-off as a result of working on the farm as opposed to the other options available to her.

The Court of Appeal's response to the first contention was that that HHJ Jarman was entitled to find that despite leaving the farm following arguments Eirian had, at least up to the point of leaving, been relying on representations previously made to her. The Court focused on the fall-out in 1989, but the same must be true of the other instances where she left the farm.

In relation to the second contention the Court did not directly address the question of whether the reliance on an earlier representation had been resumed when Eirian returned, but rather dealt with the second contention and the third contentions together. The Court of Appeal's approach to both of these main contentions is summarised neatly in paragraph 42 of the judgement. The first sentence of that paragraph states that the approach adopted by the Appellant reads too much into the judge's failures to make positive findings about the various pleaded representations from 1991 onwards. In effect, the Court of Appeal decided that from the fact that the judge at first instance found detrimental reliance in a period, it can be inferred that the judge found that there was an operative representation at that time. In this way, the Court of Appeal did not state whether a previous representation was operative or whether a new representation had become operative. Instead, the Court applied the reasoning that where there was a finding of detrimental reliance there must also have been a finding of an operative representation. In approaching the issue in this way the court is discouraging the practice of engaging in a semantic deconstruction of a judge's judgment in an attempt to undermine it. The Court fleshed out areas of HHJ Jarman's judgment which were implicitly, rather than expressly, stated in order to maintain the internal logic and consistency of the judgment.

In relation to the fourth cornerstone of the Appellants' argument on appeal, the Court of Appeal decided that the trial judge's assessment of detriment incorporated more than just a pure financial analysis, that this was a valid approach, and that he was

entitled to conclude that overall Eirian suffered net substantial detriment² as a result of working on the farm.

As part of their judgment the Court of Appeal also observed that, insofar as case management was concerned, a split trial involving a preliminary hearing tasked with deciding a list of factual preliminary issues would not normally be appropriate in a claim for equitable relief based on proprietary estoppel.

What can be learnt from this case?

The Court of Appeal indicated that, as observed in *Gillet v Holt*³, proprietary estoppel claims require a holistic approach and that therefore split trials are not a good idea in this area. Further, this indication casts light on the general approach which should be adopted in proprietary estoppel claims. Equity, in such cases, is a fluid concept, much like justice, which it seeks to serve. The Court mentioned *Gillet v Holt* in its judgment because in that case Walker LJ made that fluidity clear. Therefore in preparing a proprietary estoppel claim the inherent fluidity of the nature of the equitable process involved should be borne in mind, even though a degree of compartmentalisation and sub-division is required for the ordinary business of ordering and fighting a case.

Further, the Court's emphasis on the fluidity of the concepts involved in equity gives rise to another good rule of thumb: do not lightly "salami slice" the parties' relationship when it has depth and endures over a number of years. In this appeal the Appellant sought to sub-divide and make distinct various stages of the parties' relationship, asking the question of which representations were operative at different times and suggesting that tumultuous events could serve to effectively cancel representations out. In my view, the Court of Appeal was right to militate against this practice largely because it does not cohere with a correct analysis of relationships, or complex matrices of facts, which develop over long periods of time. To superimpose distinct periods onto the relationships and facts which may give rise to an equity is to restrict the fluid application of equitable principles and belies the complexity and fluidity of the relationships and facts themselves.

Finally, a simpler point also arises from this case. The Court of Appeal states, at paragraph 33, that deciding whether there is detrimental reliance in any case involves making an evaluative judgment based on the facts and that 'normally lies within the exclusive province of the trial judge'. The Court quoted the case of *Suggit v Suggit*,⁴ emphasising that it can only interfere with the trial judge's assessment of this issue if the finding before it is perverse or clearly wrong. Therefore in relation to disputing a finding of detrimental reliance on appeal the following mantra should no doubt be remembered: *caveat appellor*.

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² Where substantial detriment is detriment which renders it inequitable to allow the assurance to be disregarded. *Gillet v Holt* 232E-F

³ [2001] Ch 210

⁴ [2012] EWCA Civ 1140 per Arden LJ