Wills and Estoppel in the Court of Appeal

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It is not unusual for elderly relatives to promise their younger relatives benefits on their death. Sometimes this is done to obtain love, affection or even services. When the will is read, there may be disappointment.[1] If there is a legal remedy for the disappointed beneficiary, it may lie in the doctrine of proprietary estoppel. That is a principle of equity that prevents people from going back on assurances that they make in respect of their property where the assurance has been relied upon, and it would be unfair for them to do so. It is of general application, and not simply limited to promises made about inheritances – but that is where the present interest appears to be. In Thorner v.

[1] Or in the words of Nick Lowe, in the appropriately titled 'Indian Queens'
'He said he'd leave me everything/ but he died before he could sign the will'.

Majors [2009] 1 WLR 776 Lord Walker said[2] that it was unlikely that treating the doctrine liberally would open the floodgates of claims. That view may have been a little optimistic. Bradbury v. Taylor is the third such case on the topic to reach the Court of Appeal in recent months[3].

The Facts

Bill Taylor was an artist, art historian, teacher and journalist. By 2000 he was 80 years of age, recently widowed, and living in his large Grade II- listed Cornish long-house filled with antiques and valuable. He asked his nephew, Roger Taylor, and his partner, Denise Burkinshaw, to relocate from Sheffield and move in with him, with their two young children. This they did, and the house was divided in two. Roger set about carrying out various works to the house (as to the cost and value of which there was much dispute),

[2] Para. [60]

[3] The other two are Shirt v. Shirt and Suggitt v. Suggitt. Both appeals were dismissed on the facts.

whilst they assisted Bill with his home life from time to time. However, by 2008 there was a falling out. Roger and Denise said that Bill had promised them the house on his death, and that was why they moved down. Bill denied making any such promise, and brought a claim to establish that Roger and Denise had no such rights. Roger and Denise counterclaimed, asking the Court to declare that Bill was obliged to leave them the house.

Unfortunately, just before Bill was due to give evidence he died. His will left his estate in the main to charity, and although he left Roger a financial bequest, that was to lapse if Roger and Denise failed to vacate the house within six months. The house was worth about £800,000, and the estate as a whole about £1,100,000. The case continued. The Judge held that Denise and Roger had been promised the house; that they had relied on that promise by moving down and relocating; by carrying out work to the house;

and by caring for Bill. That was a sort of bargain, and, applying the guidance of Robert Walker LJ in Jennings v. Rice [2001] 1 FCR 501 at [45] to [51], it would be unfair if Bill were not obliged to carry out his side of it. Subject to Roger and Denise having to pay the additional inheritance tax, they would have the house.

The Appeal

The executors appealed the decision, essentially on two grounds. The first was that the Judge had held that Bill had sent Roger a letter setting out the basis on which they were to come to live with him. According to the Judge, this letter did not contradict the verbal assurances which (he found) Bill had previously made to Roger and Denise. The executors have argued that the letter makes it plain that there was no gift of the house; and that whatever Bill had previously promised, by the time of the letter such an

assurance could not be relied upon. This point, however decided, is unlikely to create any new principle of law.

The second ground of appeal could be more far-reaching in effect. Having found that an assurance had been made, and that a 'bargain' had been struck, the Judge applied the guidance given by Robert Walker LJ in Jennings v. Rice and held that the usual and appropriate remedy was to complete the bargain, in this case by awarding Roger and Denise the house. The executors challenged this on various grounds:

(1) The award was 'disproportionate', and 'proportionality' was a fundamental requirement of proprietary estoppel[4]. One difficulty with the 'requirement of proportionality' was that the cases spoke with different voices as to what the remedy had to be proportionate to. Was it the promise? Or the detriment? Or a combination of both? Or simply relative to the 'unfairness' that arose from the withdrawal of the assurance? In which case it simply came down to doing what

[4] See Henry v. Henry [2010] 1 All ER 998 per Sir Jonathan Parker at [65].

was 'fair', which gave no-one much assistance in predicting what a Court might do in any case. The executors argued that the remedy should be proportionate to detriment, which was not great in the present case. Putting that to one side the Executors argued that whatever analysis was adopted, the Judge's award was plainly too much;

(2) The Judge failed to take into account the compensating benefits that Denise and Roger had already had. Not only had they had a decade's rent free accommodation in the house; but they had retained their former house in Sheffield, which they had let out for rent. He also erred in appearing to think that in order to weigh up the detriment and benefits he had to give these a financial value which he was unable to do;

(3) The guidance in Jennings v. Rice is itself wrong – not only was the present case not really a 'bargain' case; there were 'degrees' of bargain; and Robert Walker

LJ's suggestion that where a bargain existed the Court would carry it out unless it was out of all proportion to the detriment suffered was far too prescriptive

The Court of Appeal (Lloyd, Richards and Elias LJJ) reserved judgment until October.

Leslie Blohm QC and Philip Jenkins appeared for the executors.

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July 2012
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