Tendency of court to award the expectation in promise-based estoppel claim (Habberfield v Habberfield)

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Private Client analysis: According to Leslie Blohm QC at St John's Chambers, this farming estoppel case illustrates that a judge has a wide discretion to craft an award that the Court of Appeal can only disturb on limited grounds—and that this is costly and uncertain litigation, which is best settled if at all possible.

Habberfield v Habberfield [2019] EWCA Civ 890, [2019] All ER (D) 129 (May)

What are the practical implications of this case?

Although the court has a discretion as to the relief to be granted in a proprietary estoppel claim, the judgment emphasises the tendency of the court to award the expectation (what was promised) where the reliance is part of a clear bargain between the parties, and the claimant has carried out his or her side of the bargain.

In assessing the award, the court will take into account steps taken or offers made by the defendant to perform the promises, but where that does not amount to giving what was offered, the court is not bound to treat inadequate offers as discharging the claimant's right to an award.

The judgment also indicates, following on from the recent decision in *Moore v Moore* [2018] EWCA Civ 2669, [2018] All ER (D) 181 (Nov), that:

- defendants who seek to challenge the award on the ground that its tax consequences are highly adverse need to provide evidence of such consequences to the trial judge, and
- that even where the outcome is very hard on the defendant, the court will not necessarily allow the costs incurred in the litigation to limit the final award the court may make, whether at first instance or in the Court of Appeal

What was the background?

This is a farming estoppel case. Lucy Habberfield worked for many years on her parents' dairy farm. She did so because of her parents' assurances that she would in time succeed to a 'viable dairy unit', which was the judge's interpretation of the assurances—in reliance on which she worked for 30 years for very long hours in difficult conditions and for which she was, as the court found, underpaid (if calculated on an hourly basis) by £220,000. In 2008, her parents offered to take her into partnership of the farming business with them. Lucy refused as she had expected to take over the farm, and she was concerned that her siblings were influencing her parents in the running of the farm—she continued to work for her parents. In 2013, Lucy and her sister fell out, and she stopped work. Lucy's father died in 2014, and Mrs Habberfield denied that any assurances had been made. Mrs Habberfield sold the dairy herd and unit in 2015. The farm was divided into two parts:

- Woodrow, including the farmhouse, worth £1,650,000 (£1,170,000 without the farmhouse), and
- Mudford, worth £950,000

Birss J held that Lucy was entitled to £1,170,000 plus her costs. Mrs Habberfield appealed, asserting that:

- Lucy had been offered a partnership in 2008 and had she taken it, she would probably have inherited the farm. Therefore, having made the offer, it was not unconscionable for her parents to resile from their assurances
- the award was excessive—Lucy received £1,170,000 when the financial loss to her was only £220,000 at most

- following *Moore v Moore*:
  - the tax consequences of the award were uncertain—it was possible that Mrs Habberfield (aged 82) would have to sell her home
  - the court had not taken into account the costs consequences of the litigation. Given that Lucy had always understood that Mrs Habberfield could live on the farm, an order that would have the practical consequences of forcing her to leave would be unjust

What did the court decide?

This decision follows on from Lewison LJ's earlier decision in Davies and another v Davies [2016] EWCA Civ 463, [2016] All ER (D) 09 (Jun). There, the court stressed the need for proportionality in a proprietary estoppel award and awarded a claimant in a similar position a sum of money that was more closely related to the value of the detriment that she had suffered over the years. But in Davies—as the court made clear—the assurances varied over time and the reliance upon them was not continuous but intermittent. Davies was not a quasi-contract case.

In *Jennings v Rice and others* [2002] EWCA Civ 159, [2002] All ER (D) 324 (Feb), Robert Walker LJ had broadly divided promise-based estoppel claims into two:

- those that were like contracts, where substantial reliance on the promises made it very likely that the court would cause the promise, or 'expectation' to be fulfilled, and
- those that were not, where the court was less likely to do so

Davies fell on the 'non-contract' side of the scale. Lewison LJ considered that *Habberfield* firmly fell on the contract side. Not only was the promise clear and consistent, but it was also a bargain made with Lucy, intended to induce Lucy to act in a certain way. In these circumstances, the claim for the court to award the claimant's expectation was particularly strong, and the award of the expectation, or something close to it, was justified.

It was wrong, however, to separate all successful cases into two different categories with a sharp divide of those that are like contracts, where (if one side has performed the bargain) the expectation will be awarded, and in all other cases, a lesser award—usually the detriment.

In *Davies*, Lewison LJ thought that a 'sliding scale' might be applied to bridge the gap. In *Habberfield*, the court approved the suggestion that these cases lie on a spectrum of awards.

The promise made in 2008 was not a defence. It did not amount to what had been promised, and by refusing it, Lucy had not waived her claim. The position might have been different had she renounced her right, but that would have required either full knowledge of her rights, or reliance by her parents on the renunciation.

Although the consequences of the order were harsh, Mrs Habberfield had not produced evidence of the adverse tax consequences of the proposed order before the judge, and the Court of Appeal would not now intervene. The court also rejected the assertion that Mrs Habberfield could rely on her impecuniosity to demonstrate that the award was excessive, where that impecuniosity arose from the legal costs incurred in defending the claim.

Habberfield illustrates that a judge has a wide discretion to craft an award that the Court of Appeal can only disturb on limited grounds and that this is costly and uncertain litigation, which is best settled if at all possible.

Leslie Blohm QC is joint deputy head of St John's Chambers and head of the Commercial and Chancery practice group. Blohm is one of the Western Circuit's leading commercial and chancery practitioners and was shortlisted for 'Silk of the Year' within the Legal 500 UK Regional/Scottish Awards 2018. Blohm deals with commercial disputes and problems, in particular those with a property element. He also acts in probate disputes, Inheritance Act claims and trust litigation. He has written a paper entitled 'Farms and estoppel claims—the new growth era' (published Sep 2014). In Habberfield, Blohm was lead counsel for the successful respondent, Lucy Habberfield.

Interviewed by Kate Beaumont.

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