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Be my Guest—the world of proprietary estoppel following the recent Supreme Court decision (Guest v Guest)

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Private Client analysis: The long-awaited decision in Guest v Guest has been handed down. Many had hoped it would clarify the somewhat higgledly-piggledly law in this area and provide a user-friendly rubric for practitioners. The question arises: has that been achieved? On one analysis the answer is simple—yes it has. What was once described by Lord Justice Lewison in Davies v Davies as the 'lively controversy' about the essential aim of the exercise when the courts assess remedies in proprietary estoppel cases has now been put to bed. In fact Lord Briggs, who wrote the majority judgment in Guest, perhaps goes even further and denies that the controversy should ever have been thought 'lively' in the first place. In essence, the aim of the remedy is, in Lord Briggs' words, 'to remedy unconscionability mainly by satisfying expectation'. The main takeaway being that the 'fulfilment of the promise' is 'likely to be the starting point' in many cases. However, it seems unlikely that proprietary estoppel cases will now become a walk in the park for practitioners, as, though it has been made clear that the remedy is usually to be framed around the granting of the promise, 'considerations or practicality, justice between parties and fairness to third parties' may mean that a lesser award is in fact required. More details from the judgment, including where the mantra 'minimum equity to do justice' and the idea of proportionality between remedy and detriment have been left are discussed below. Written by Adam Boyle, barrister at St John's Chambers and junior counsel for the respondent in the Davies v Davies case.

Guest and another v Guest [2022] UKSC 27

What are the practical implications of this case?

There was an intentional round of debunking on offer from Lord Briggs on some key themes. This seems likely to be helpful to practitioners on the ground, both those set in their (now-debunked) ways and those learning the ropes alike.

To begin, the well-known and well-worn mantra, near at hand for many practitioners, 'the minimum equity to do justice' came in for a bit of a thrashing. At least, its meaning as it is popularly (mis)understood did.

Having traced the evolution of the dictum from its origins in Crabb v Arun District Council [1976] Ch 179 through a variety of other cases, Lord Briggs made it clear that it had never been intended to mean that judges should simply value the detriment and was in fact first used in an analysis 'all about fine-tuning the fulfilment of the expectation of the promisee'. Its popular use as the battle-cry of parties urging Judges simply to tot up the detriment and no more, was thus 'misconceived'. Near the beginning of the judgment, Lord Briggs notes that the appellants' had placed the said dictum at the forefront of their submissions, de-scribing it as 'the golden thread which explains the nature and purpose of the remedy'. Simply put—it would seem that it is not, and it does not.

Also in the firing line was the idea that when the courts assess remedies in proprietary estoppel cases the remedy should be proportionate to the detriment. Lord Briggs explained that this notion had first been introduced to English law in relatively recent times, with Sledmore v Dalby (1996) 72 P & CR 196 (not reported by LexisNexis®UK) and appears to have been inspired by Australian cases. However, as it turned out, Australian jurisprudence went on to reject the idea. Further, Lord Briggs in Guest all but completely rejected proportionality as a principle for use in proprietary estoppel cases. However, rather than being completely dismissed the court described it as a 'good servant but a bad master…no more nor less than a useful cross-check for potential injustice'.

What this means for practitioners is as follows: where the proposed remedy (think the expectation arising from what was promised) is 'out of all proportion' to the detriment, without good reason, a lesser remedy may then be appropriate. Lord Briggs gave the example of a promise to leave a generous inheritance if the relevant promisee cared for the promisor for the rest of the promisor's life—but where the promisor dies just two months later.

Notably, even in instances where the detrimental reliance is out of all proportion to the promise, the court should not simply revert to compensating the detriment. Instead, it should simply avoid 'a disproportionality which is so large as to stand in the way of a full specific enforcement…'.

What was the background?

'"One day my son, all this will be yours". Spoken by a farmer to his son when in his teens, and repeated for many years thereafter.' So the 108 pages Supreme Court judgment begins (arguably with echoes of the kind of landowning father to son moment we might already be familiar with from popular culture (perhaps the famous scene from the Lion King) 'Simba, everything the light touches…. is our kingdom… A king's time as ruler rises and falls like the sun. One day, Simba, the sun will set on my time here, and will rise with you as the new king…').

The point Lord Briggs was making is that the kind of succession planning, which in this context often be-gins with a father talking to his young son about a farm, is a fairly familiar story, well-known to the law. The story then develops and the son then proceeds to rely on his promised inheritance spending the best part of his working life on the farm at low wages, living on the farm in the expectation that he will succeed his father and continue farming the land as his own. (Naturally, it is the case that a daughter rather than a son can be promised land in the same way, as was the case in Davies v Davies.)

The judgment goes on to highlight that many years later father and son can fall out such that they can no longer work together or even live close by to one another. The son is forced to leave the farm, rent accommodation for himself and his family somewhere else, and to find alternative work (ie not on the parents' farm).

To worsen the blow, the father cuts the son out of his Will and/or generally disinherits him. These facts give rise to the archetypical proprietary estoppel farming case, and many of the famous historic cases which have vexed the courts had facts which were along very similar lines.

As pointed out by Lord Briggs, the facts in Guest differed slightly from the archetypical narrative in a couple of notable ways. The father, David Guest, had two sons, Andrew and Ross, as well as a daughter, Jan. Andrew was not promised the whole farm as his inheritance, but was only promised a sufficient (but undefined) part of it to enable him to operate a viable farming business after the death of his parents.

What did the court decide?

Shortly put, the court's ultimate decision, as applied to the facts, was somewhat nuanced in this case. Arguably, this might serve to functionally dilute the clear way in which the court sought to put to bed the 'lively' academic debate. As a reminder of the ground that was covered earlier in the above, the court stat-ed that relevant unconscionability will generally be remedied by satisfying the expectation/fulfilling the relevant promise.

It was clear on the facts of the Guest case that a thorny issue was present which made assessing the remedy particularly difficult. Andrew, the son, had been promised his share of the farm when his parents died, but his parents were still alive; what was the law to do?

Andrew was already entitled to 50% of the relevant business under his partnership with his parents. The court found that 40% of the farm was 'a perfectly appropriate division for the purpose of making good the parents' promise'.

But what of the fact that his parents were still alive? The 40% share was only appropriate once his parents died. In order to pass the said share to him upon his parents' death a reversionary interest under a trust of the farm, with his parents having a life interest in the meantime, was the way to achieve that. This was option 1.

In addition, the court was aware that there may be a desire among all parties for a clean break for various reasons. In order to ensure that there was no extra-advantage to Andrew if he received a benefit sooner than he had been promised the court decided that a discount for early receipt would have to be built into the Order. This was Option 2.

How was the court to choose between these two different ways of satisfying the equity?

Interestingly, the court decided that it was the parents who should be entitled to choose between the two alternative forms of relief.

While this is certainly a pragmatic solution, some of us might wonder if this approach feels a little harsh on Andrew and disappointed children in general. If, implicit in a promise (repeated for decades), is the assurance that the farming-child will be able to be a farmer all of their life, and will inherit a functioning farm, is it fair that the parents (as opposed to the child arguably left, in the short term, more helpless) get to dictate, (on one analysis, once again), the course of the said child's life, perhaps for further decades? What if they intentionally run the farm down before handing it over? What if the farming-child loses the skills, or the experience, to make a go of the farm after having to seek alternative employment outside of the industry?

While abstract thought-experiments in a vacuum here are unlikely to be of too much assistance, it will be interesting for practitioners to watch whether such issues are raised in real cases in the future, and interesting to see whether any arguments raised along similar lines gain traction with the courts.

Case details:

- Court: Supreme Court
- Judges: Lord Briggs, Lady Arden, Lord Leggatt, Lord Stephens and Lady Rose SCJJ
- Date of judgment: 19 October 2022

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