



SELBORNE CHAMBERS

Farming, Proprietary Estoppel and the Importance of PD57AC

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In Spencer v Spencer [2023] EWHC 2050 (Ch), Mr Justice Rajah heard yet another dispute concerning a family of farmers in the context of proprietary estoppel. Whilst the case does not cover any groundbreaking new law, it does contain both a helpful summary of the relevant law, an example of how the law on remedy in the post—Guest v Guest [2022] 3 WLR 911 world operates, and a reminder on the importance of preparing witness statements compliant with PD57AC CPR.

Relevant Facts

John Spencer (deceased) tenanted and owned land comprising about 816 acres in North Witham, Lincolnshire, which he had farmed since the 1960s (Farm). As relevant, his son Michael (the claimant), had farmed the land since he was 15, living in a cottage on the Farm and working for minimal wages, even after he married and had children. Since 1983, there had been a partnership between John, Michael and his sister Penny, but the profits from the partnership (which were significant) had been retained on John's direction. John died in 2018.

The dispute arose principally because John's last will, contrary to a previous will made in 2003, left only John's share in the partnership to Michael, with all the Farm being left to a discretionary trust. It was Michael's case that he had been repeatedly assured by John prior to his death that Michael would inherit the Farm entirely.

It was a feature of this case that Michael was the only living person able to attest personally to the relevant assurances, although there was evidence from other witnesses dealing with what John had told them about the assurances. Somewhat unusually, Michael's solicitor in the litigation was a witness of fact in support of the claim.

Establishing the Equity

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1. The question is whether the assurance was reasonably understood by the promisee to be unambiguous and intended to be taken seriously, not how the promisor subjectively intended it [26].
2. The assurance must relate to a proprietary interest in property owned by the promisor; it cannot relate merely to a job, role or responsibility [27].
3. It is important to distinguish between mere statements of present revocable intentions and statements tantamount to a promise (the former not being capable of reasonable reliance) [28].
4. Detriment must be pleaded and proved but it need not consist of quantifiable financial detriment, provided it is substantial. It is to be judged at the time the promisor repudiates their assurance [30]. Further (as to which see *Guest* at [72]) it is not often helpful to contrast financial detriment with financial detriment in terms of remedy, particularly in farming cases where the low cost of farming wages versus the high value of farming land in the modern world creates an impression of disproportionality.

In this case, *Rajah J* found that, whilst Michael's evidence on the whole was relatively poor, John had made repeated assurances to Michael that the Farm would be inherited by him, some of which were corroborated by other witnesses.

In terms of detriment, the interesting part of the decision at [97] was that, although Michael had benefitted very substantially from the partnership (the combined value of his capital account and pension being over £2m), he still

Proved substantial detriment because it was “not possible to put a money value on the unquantifiable detriment of committing a life to a farm and not building a different life elsewhere, nor to recreate a world without the assurances...”.

It is often argued by promisors that countervailing benefits arising outweigh any detriment. This decision is helpful in countering such arguments when they relate to speculation i.e. whether the promisee's life would have been better had they not relied upon the assurances.

Remedy

Michael sought the entirety of the Farm by way of remedy. This included land not used by the partnership for farming, but which was valuable due to its potential for mineral extraction.

The Court found that Michael was not entitled to the (**New Quarry Land**) except insofar as Michael ought to be entitled to its agricultural value [107–110]. This was because the promises made by John were that Michael would inherit the Farm so he could continue farming it, not that he could obtain the land for non—farming purposes.

This was an interesting exposition of the approach advocated by Lord Briggs in *Guest* at [80]. In summary, that the Court must stand back and look at whether the proposed remedy, if conferred by the promisor upon the promisee, would be unconscionable and/or whether it would do justice between the parties, and third parties. Here, the Court reflected the starting point, which is that the promisor ought to be held to the promise as understood and relied upon by the promisee.

Witness Statements

An interesting procedural point arose in respect of one of Michael's witnesses, his solicitor Mr Russ. His witness statement purported to comply with PD57AC (the PD for trial witness statements in the B&PC) but his oral evidence demonstrated that he had signed both the Statement of Truth and Confirmation of Compliance without proper regard to their significance.

Of general application is the comment at [54(i)], where Rajah J expressed the view that a solicitor giving evidence on behalf of their client ought not to self-certify [the matters required by the Certificate of Compliance] and suggested that either there ought to be another legal representative who performed that role, or that there ought to be a without notice application made under paragraph 4.4 of the PD for dispensation from having to complete the Certificate.



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