

Proprietary Estoppel Assignment

would be unconscionable for the representor to resile. 'The claimant must also specify the right in the representor's property which he believed he had or would have ie a certain interest, and the facts or law which would defeat the claim to that right and which the representor must therefore be estopped from raising'.²¹ Each element is extremely flexible, but also vague, which means that an outcome is often difficult to predict as will be shown.

The first element in the broader approach is representation, as illustrated in *Re Basham*²²: where a claimant acts on the encouragement of the owner, this can be seen as representation. This was a clear case of representation as the claimant had spent money on the property under the belief that the deceased had promised her that he would leave it to her in his will. Again in *Dillwyn v Llewellyn*²³, the son's expenditure and the father's acquiescence amounted to an estoppel, so the son was awarded equitable rights to the land. In *Pascoe v Turner*²⁴, on the breakdown of a relationship the defendant had promised his ex-partner that the house and everything in it was hers. On the strength of this promise she spent money on improvements to the property. Based on this expenditure, the Court decided to uphold a finding of PE and ordered a fee simple owner to transfer his estate to his former partner.

However, in *Layton v Martin*²⁵ the claimant was not granted PE as the claimant had only been promised financial security and not assets relating to land. Scott J held that PE could only arise in connection with some particular asset. In the more recent case of *Cobbe v Yeoman's Row Management Ltd*²⁶ the court decided that there was not assurance that would support a claim for PE; the claimant was acting on a hope, not an expectation, assumption or mistake as to his rights. The assurance that the owner will act a certain way, will not necessarily amount to PE, especially in a commercial setting, where 'certainty and clarity are particularly important, and judges should be slow to encourage the introduction of uncertainties based on their views of the ethical acceptability of the behaviour of one of the parties'²⁷. However, 'in many cases of promises made in the family context, there is no intention to create an immediately binding contract'²⁸.

While recognising that this might beg the question, Walker LJ notes in *Thorner v Major*²⁹ that, for a successful PE, the assurance has to be 'must be clear enough. What amounts to sufficient clarity is hugely dependent on the context.'³⁰ Although this might seem too vague and uncertain, it is consistent with earlier authorities. There is no reason to confine estoppel only to those cases where a specific

²¹ MacKenzie and Phillips (n 12) 375.

²² [1986] 1 WLR 1498.

²³ (1862) 4 De G.F.& J. 517 C.A.

²⁴ [1979] WLR 431.

²⁵ [1986] 2 FLR 227.

²⁶ [2008] 1 WLR 1752.

²⁷ Lord Neuberger, 'The Stuffing of Minerva's Owl? Taxonomy and Taxidermy in Equity', (2009) Cambridge Law Journal 537.

²⁸ Ibid.

²⁹ [2009] 1 WLR 776.

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Milne P, 'Proprietary Estoppel In a Procrustean Bed', (1995) 58 MLR 112

Moriarty, 'Licences and Land Law - Legal Principles and Public Policies', (1984) 100 LQR 376

Neuberger, 'The Stuffing of Minerva's Owl? Taxonomy and Taxidermy in Equity', (2009) Cambridge Law Journal 537

Nicholson, 'Riches v Hogben-Part Performance and the Doctrines of Equitable and Proprietary Estoppel', (1986) 60 Australia LJ 345

Ridge, 'The Equitable Doctrines of Part Performance and Proprietary Estoppel', (1988) 16 Melbourne U LR 725

Robertson, 'Reliance and Expectation in Estoppel Remedies', (1998) 18(3) LS 360

Spence, 'Estoppel and Limitation', (1991) 107 LQR 221

Thompson, 'Estoppel and Clean Hands', (1986) Conveyancer 406

Thompson, 'From Representation to Expectation - Estoppel as a Cause of Action', (1983) CLJ 257

Warburton J, 'Trusts, common intention, detriment and proprietary estoppel', (1991) 5 Trust Law International 9

Case Law:

Birkrom Investments Ltd v Mann [1979] QB 467

Campbell v Griffin [2001] EWCA Civ 990

Cobb v Yeoman's Row Management Ltd [2008] 1 WLR 1752

Crabb v Arun District Council [1976] Ch 179

Dillwyn v Llewellyn (1862) 4 De G.F.& J. 517 C.A

E R Ives Investments Ltd v High [1967] 2 QB 379

Gillett v Holt [2000] 3 WLR 815 (CA)

Gissing v Gissing [1971] AC 886

Grant v Edwards [1986] Ch 638

Greasley v Cooke [1980] 1 WLR 1306

Inwards v Baker [1965] 2 QB 29, C.A

Jennings v Rice [2002] EWCA Civ 159

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