



PUMP COURT

CHAMBERS

# Proprietary Estoppel: Recent Cases

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# Proprietary Estoppel: The Elements

- 1. Promise
- 2. Reliance
- **3. Detriment**
- Unconscionability

## Recent Cases

- *Spencer v Spencer* [2023] EWHC 2050 (Ch)
- *Winter v Winter* [2024] EWCA Civ 699
- *Fox v Bent* [2024] EWHC 2179 (Ch)

## *Spencer v Spencer: Facts*

- Classic estoppel factual matrix.
- A son (Michael) brought a claim against the estate of his late father (John) after he was cut out of his father's third and final will, executed in 2018 shortly before he died.
- Michael and John farmed in partnership since 1983, when Michael was 19.
- Michael lived rent-free on the farm. By 1996, Michael received 95% of the profit share.
- Michael asserted that throughout his life, John had promised him that he would inherit the farm.



# *Spencer v Spencer*: Decision

- Summary of the law, including a strong emphasis against compartmentalising the elements of proprietary estoppel.
- 1. Promise – general statements were made, the gist of which were that Michael would inherit the farm.
- 2. Reliance – the assurances were a significant inducement and the reliance was bound up with the detriment.
- 3. Detriment – a difficult issue because of the significant countervailing benefits but:

*Detriment must be pleaded and proved, but it is not a narrow or technical concept. It need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The issue of detriment is judged at the moment when B decides to repudiate his assurance. The broad inquiry which then arises is whether the repudiation of the assurance is or is not unconscionable in all the circumstances. (Quoting from Gillett v Holt)*



# *Spencer v Spencer*: Decision

- The detriment arose from the lifelong consequences of remaining on the farm:

*The detriment is in the giving up of an opportunity to take a different course in life, with all the possibilities that different course may bring, both good and bad, financial and otherwise.*

...

*I accept that looking at the matter in the round Michael has positioned his working life in significant part on the basis of the assurances that he will receive the farm. It is impossible now to unpick what he might have done differently with his life over 40 years if there had never been such assurances.*

...

*It is 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.*

- Unconscionability – this was a quasi bargain and Michael had upheld his end of the deal.



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## *Winter v Winter: Facts*

- Farm in joint names of husband and wife (Albert and Brenda).
- A partnership was established to run a market garden business. Albert, Brenda and their three sons (Richard, Philip and Adrian) had equal shares in the partnership.
- In 2000, Albert and Brenda declared that the farm was held on trust for the partnership.
- In 2001, Brenda died leaving her share to her sons.
- The partnership acquired two more farms so that the sons could have a farm each.
- In 2004, the market garden business was transferred to a company. The land owned by the partnership remained with it.
- From 2013, the relationship between Albert and Philip on the one hand, and Richard and Adrian on the other, began to deteriorate.
- Albert died in 2017 leaving a will that left his interests in the company and the partnership to Philip.
- Richard and Adrian argued that Albert was estopped from doing so based on repeated assurances that his interests would be inherited by the sons in equal shares, and they had detrimentally relied on those assurances. This succeeded at first instance.



## *Winter v Winter: Decision*

- Appeal focused on detriment.
- Issue was that Richard and Adrian had benefited significantly from reliance on the promises made by their father.
- The trial judge found detriment because:
  1. Cannot put a money value on committing an entire working life to a family business, giving up the chance to build an alternative life elsewhere.
  2. Cannot compare in financial terms the benefits received with the detriment suffered.
  3. Over-simplistic to say that committing to the family business cannot be described as a detriment in view of the financial benefits.
  4. Would it be unconscionable to renege? There was continuing commitment over a long period of time.





## *Winter v Winter: Decision*

- The argument on appeal was that, if a claimant was arguing they had forwent an opportunity, they had to show that this would have put them in a better position.
- Trial judge had found that they would not have accumulated more wealth if they left the farming business.
- There can only have been a net detriment if the non-financial disadvantages outweighed its financial benefits. The judge failed to weigh the detriment against the financial benefits, simply saying that there could be no meaningful comparison and then jumping to unconscionability.



# *Winter v Winter*: Decision

- Appeal dismissed.
- The Court must weigh any non-financial disadvantage against any financial benefit even where the disadvantage is not susceptible to quantification.
- But the judge did in this case. He recognised the argument and did not say that *no* comparison could be carried out, only in financial terms. Unconscionability “best explained” why there was a net detriment.
- The judge was entitled to take this view because:
  1. The pleadings were wide enough.
  2. Where a claimant has devoted their working life, there may be detriment even if they would not have taken a different more profitable alternative course of action. Loss of opportunity is itself detrimental.
  3. Richard and Adrian had made life-changing choices on the strength of their father’s assurances.

## ***Fox v Bent: Facts***

- Marcus Bent was made bankrupt on 2 January 2019. Only significant asset appeared to be a property in Surrey.
- Trial judge decided that the property was held on a common intention constructive trust for Marcus' daughter and did not form part of the estate in bankruptcy.
- Property purchased in sole name in 2006 when separating from previous partner and when daughter was just 2-years-old. Marcus did not occupy the property.
- Trial judge found that it was agreed that Marcus would purchase the property and hold it on trust for his daughter, and that his daughter had detrimentally relied on that agreement.
- Permission to appeal given by Adam Johnson J.

## ***Fox v Bent: Facts***

- Grounds of appeal:
  1. Detriment had to be suffered by the beneficiary. Detriment by proxy will not suffice.
  2. There was never a settled common intention.
  - 3. The detrimental reliance was insufficient.**
  4. The beneficiary could not have been privy to the common intention.

## *Fox v Bent: Facts*

- Appeal dismissed:

1. Detrimental reliance has to be suffered by the intended beneficiary but the daughter *did* detrimentally rely on the common intention through the agency of her mother.

2. Judge had weighed the evidence and his conclusion on the common intention could not be interfered with.

**3. The question of detriment is an evaluative exercise. The daughter, acting through the agency of her mother, had oriented her whole life around the agreement. She did not seek further relief from Marcus. Her mother did not take steps to invest her own money to provide a property for her daughter. The judge had weighed the countervailing benefits.**

4. An agreement was reached between Marcus in his own capacity and his partner, acting on behalf of her daughter. The parties to the agreement therefore had full capacity.

## Recent Cases: Lessons

- Detriment is a discretionary and evaluative exercise. Financially quantifiable assessments might be inappropriate or impossible.
- Reliance with lifelong consequences is likely to amount to net detriment, even if very obviously beneficial.
- Detriment is a wide concept but must still be pleaded and proved.
- Plead widely and link to unconscionability.



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