LexisNexis®

Proprietary estoppel fails as defence to claim for possession of farm (Earl of Plymouth v Rees)

This analysis was first published on Lexis®PSL on 07/12/2021 and can be found here (subscription required).

Private Client analysis: A good illustration of the realistic limits of proprietary estoppel. The landlords sought to recover possession of a tenanted farm. After Notices to Quit were upheld at arbitration, the landlords' claim for possession was defended on the basis that the landlords' agent had promised the tenant and his son that the landlords would never seek to recover possession until 'fair compensation' was paid—ie enough money to allow the tenant to move on and carry on farming elsewhere. The judge held that this was, even at its highest, no more than a promise to negotiate, and so was not the sort of promise capable of giving rise to a proprietary estoppel interest: Cobbe v Yeoman's Row Management. The landlords were entitled to possession of the farm, and the tenant's counterclaim was dismissed. Written by Christopher McNall, barrister at 18 St John Street Chambers, Manchester.

Earl of Plymouth and others v Rees (deceased) (by his representative Gerald Phillip Rees) and another [2021] EWHC 3180 (Ch)

What are the practical implications of this case?

Proprietary estoppel is evergreen in the context of farms. Often, those are claims by children against parents of the 'you told me that one day the farm would all be mine' variety. This one was a claim by a tenant against a landlord, of a similar 'you told me that I would not have to leave the farm until...' character.

It is important to remember that proprietary estoppel has its limits. This decision identifies one of them with clarity and precision. To that extent, this decision pushes the genie of proprietary estoppel back into the bottle.

A promise by a landlord of a farm that, if possession was required, 'fair compensation' (not limited to the statutory compensation payable under the Agricultural Holdings Act 1986 (AHA 1986)) would be paid was not, even at its highest, a promise of the kind which could engage proprietary estoppel.

A promise of financial security (*Layton v Martin* [1986] 2 FLR 227) or an expectation dependent on the conclusion of a successful negotiation (*Cobbe v Yeoman's Row Management Ltd* [2008] UKHL 55) are insufficient to create an equitable or legal interest in any particular asset or assets. A promise to negotiate does not create an equitable proprietary interest in any particular land.

The decision shows the importance of gatekeeping and anxious scrutiny of claims of this kind, even if mounted as a rearguard action. If the promises relied on-even if made, and even if accurately reported—do not cross the threshold of being a promise of the right kind, then the claim runs the real risk of failure.

What was the background?

The defendant had been the tenant of Maesllech Farm, a 240 acre farm on the outskirts of Cardiff, since 1965. His tenancy was subject to the AHA 1986.

In 2016, the landlords acquired planning permission to develop a 7,000 home 'garden city', Plasdwr. Maesllech Farm was part of this. In 2018, the landlords gave notice to quit under Case B of AHA 1986, Sch 3 (the recovery of land for the purposes of development). The tenant challenged the notice to quit, but it was upheld at arbitration, and in November 2020 the High Court dismissed the tenant's appeal against the arbitral award ([2020] EWHC 1986 (Ch)).

Thereafter, the landlords brought a claim for possession founded on the notices to quit. That was met with a defence and counterclaim that, some years earlier, the landlords' agent had promised the tenant and his son that they would not have to leave the farm unless given 'fair compensation'. The

tenant said that would not be limited to the multiple of annual rent provided for by AHA 1986 but would be a sum (otherwise unspecified) reflecting the cost of relocating a farming business.

In April 2021, the High Court dismissed the landlords' application to have the defence struck-out as an abuse of process on *Henderson v Henderson principles* ([2021] EWHC 1005 (Ch))—ie something which should have been raised in the arbitration, but which was not. In September 2021, the tenant died and his son adopted the defence and counterclaim on behalf of the tenant's estate, and also was joined as a second defendant. The claim and counterclaim were heard at a two-day trial in November 2021.

What did the court decide?

The court held that the promises relied upon were not sufficient to give rise to any equitable interest in the farm capable of being vindicated by proprietary estoppel. They were no more than promises of 'financial security' or a promise to negotiate. The landlord had actually tried to negotiate in 2016 by offering £500,000—more than 10 times the statutory compensation.

Even assuming that there was a sufficient proprietary element to the promises, what was to happen was just too uncertain. The promises were to negotiate with a view to agreeing a sum: not a promise to pay whatever the promisee tenant demanded. It remained unclear just how fair compensation was to be determined, since the court would not be applying any well-established principles for the assessment of damages or compensation in other contexts.

Even if that were wrong, the court held that there was no detrimental reliance. It was not detriment for Mr Rees to have farmed in a good manner, because that is what he was obliged to do anyway under his tenancy agreement. It was also accepted in evidence that Mr Rees Jr had not passed up other opportunities. There were no acts sufficiently substantial to amount to detrimental reliance for the purpose of proprietary estoppel.

Case details

- Court: Property Trusts and Probate List (Ch), Business and Property Courts in Wales, High Court of Justice.
- Judge: His Honour Judge Jarman QC (sitting as a judge of the High Court)
- Date of judgment: 30 November 2021

Christopher McNall is a barrister at 18 St John Street Chambers, Manchester. If you have any questions about membership of LexisPSL's Case Analysis Expert Panel, please contact caseanalysiscommissioning@lexisnexis.co.uk.

Want to read more? Sign up for a free trial below.

FREE TRIAL

The Future of Law. Since 1818.

LexisNexis®

RELX (UK) Limited, trading as LexisNexis®. Registered office 1-3 Strand London WC2N 5JR. Registered in England number 2746621. VAT Registered No. GB 730 8595 20. LexisNexis and the Knowledge Burst logo are registered trademarks of RELX Inc. © 2018 LexisNexis SA -0120-048. Reproduction, copying or extracting by any means of the whole or part of this publication must not be undertaken without the written permission of the publishers. This publication is current as of the publish date above and It is intended to be a general guide and cannot be a substitute for professional advice. Neither the authors nor the publishers accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this publication.