Guest v Guest [2022] UKSC 387

In *Guest v Guest* [2022] UKSC 387 the Supreme Court has addressed the correct remedy for a proprietary estoppel claim: an issue that has vexed property law academics for the last two decades.

Proprietary estoppel allows individuals to assert and establish an interest in land without the formalities or legal certainties required by a contract. It is a cause of action of relatively recent origin: it was first confirmed as a claim, rather than a defence, by the Court of Appeal in 1976.

As is well known, in order to establish a claim in proprietary estoppel a claimant must prove that: (1) the defendant gave an assurance that they had or would have an interest in land, (2) they relied on that assurance and acted reasonably in doing so, and (3) they would suffer detriment were the defendant to resile from their promise.

Having established those elements, what remedy should be granted? Is it an order making good the defendant's promise or an order compensating the claimant's detriment? Or is it something in between? In *Guest* the Supreme Court was split 3:2 coming down in favour of a promise based remedy with caveats.

The case

The dispute before the court arose, as is very often the case, in a familial farming context. Andrew Guest (one of three children) had been promised (as summarised by Lord Briggs JSC at [2]) *"a sufficient (but undefined) part of [Tump Farm] to enable him to operate a viable farming business on it after the death of his parents"*. Andrew had relied on that promise and had worked for low wages on the farm for very many years. Subsequently the parties fell out so totally that Andrew had been cut out of his parents' wills and had had to move, with his wife and children, away from the family farm.

That Andrew had a valid proprietary estoppel claim had been established at trial and was not in dispute before the Supreme Court. The question instead was what his remedy ought to be.

The trial judge had ordered (without reasons) that Andrew should receive, net of tax, 50% of the farming business and 40% of the proceeds of sale (or valuation) of the farm after tax, reduced by crediting his parents a life interest in the farm. The amount payable to Andrew was around £1.3m. The Court of Appeal had rejected the parents' appeal on the grounds that the remedy fell within the wide ambit of the judge's discretion.

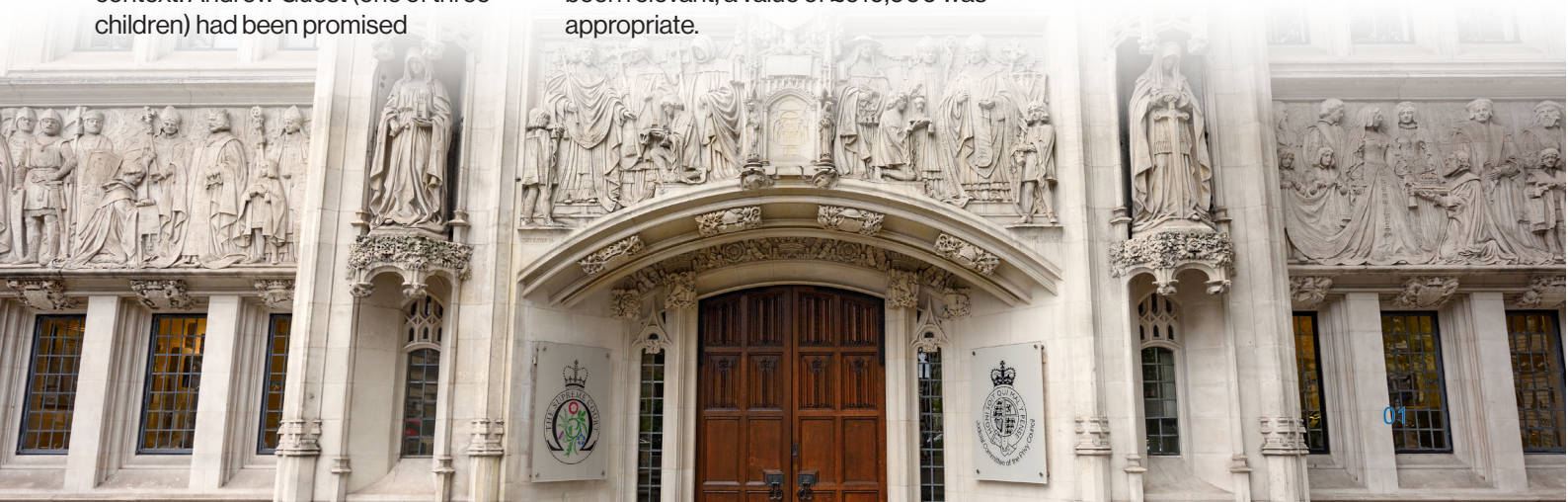
Before the Supreme Court the parents argued that the correct remedy would in fact have been to compensate Andrew for his detrimental reliance. The trial judge had not valued Andrew's reliance at first instance (he had not been asked to do so) but in the Supreme Court Lord Leggatt JSC determined that, had it been relevant, a value of £610,000 was appropriate.

The Supreme Court decision

As mentioned above the Court was split: Lord Briggs JSC (with whom Lady Arden and Lady Rose JJSC agreed) gave the leading judgment that preferred a 'promised based' remedy; Lord Leggatt (with whom Lord Stephens JSC agreed) preferred a 'reliance based' remedy.

The majority held that the starting point adopted by the Judge had been correct (for the reasons set out in more detail below) but that (1) the parents should be given a choice between an immediate payment and a structure that allowed them to farm the land whilst they lived and (2) a payment as directed by the Judge but with a discount to allow for the fact that Andrew was receiving money earlier than promised. Lord Briggs declined to determine the structure and the discount and instead remitted those questions to the Chancery Division if agreement could not be reached.

Lord Briggs identified the purpose of the remedy for proprietary estoppel as *"dealing with the unconscionability constituted by the promisor repudiating his promise"* (at [13]) and stated that the remedy analysis should *"normally start with the assumption (not presumption) that the simplest way to remedy the unconscionability constituted by the repudiation is to hold the promisor to his promise"* (at [75]).



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However, Lord Briggs added (at [76]) the caveat that if the promisor asserts and proves (the burden being upon them) that enforcing the promise *"would be out of all proportion to the cost of the detriment to the promise, then the court may be constrained to limit the extent of the remedy"*. Although he emphasised that comparing the promise and the detriment was not a purely financial comparison (at [73]): *"[m]odern capital values of farmland are typically so high that the farm would always be worth much more than any valuation of the detriment."*

If the court is satisfied that a promise based remedy would be disproportionate it should order less than full enforcement but this was not a reason for "*moving straight (if at all) to compensation on the basis of an attempt to value the detriment"*([76]). Lord Briggs accepted (at [79]) that this meant that there was a *"wide range of options with little in the way of rules as a guide"* but *"the court will just have to do the best that it can"*. He concluded (at [80]):

> *"In the end the court will have to consider its provisional remedy in the round, against all the relevant circumstances, and ask itself whether it would do justice between the parties, and whether it would cause injustice to third parties. The yardstick for that justice assessment will always be whether, if the promisor was to confer that proposed remedy upon the promise, he would be acting unconscionably. "Minimum equity to do justice" means, in that context, a remedy which will be sufficient to enable that unconscionability question to be answered in the negative"*

Lord Leggatt (with whom Lord Stephens agreed) fundamentally disagreed with the majority and was forthright in his criticism of their analysis and conclusion. At [164] he said *"[t]o give judges no clearer mandate than to do what that think just or necessary to avoid unconscionability is a recipe for inconsistent and arbitrary decision making. This is itself a source of injustice"*. At [181] Lord Leggatt stated *"Legal principle has been replaced by the portable palm tree"*.

Lord Leggatt was of the view that the cause of action could not properly be called 'proprietary estoppel' as estoppels can only be a defence and stated (at [155]) that it should be renamed 'property expectation claim'. His view, expressed at [189] - [190] was that the basal purpose of the doctrine was *"to avoid the detriment to [the promisee] which will result from [their] reasonable reliance on the promise if [they are] not given this right"*. Relying on this he concluded that the court should consider what would need to be ordered to perfect the promise and what would be needed to compensate the detriment and (at [256]) *"if on the facts both are practicable the court should adopt whichever method results in the minimum award necessary to achieve that aim"*.

Conclusion

After the judgment the Sunday Times described proprietary estoppel as *"a little-known piece of land law"* but it is clearly becoming better known. Both Lord Briggs and Lord Leggatt referred to the increase in cases in recent years. This case, and its publicity, may further swell those numbers.

If a claimant in a proprietary estoppel claim establishes a promise, reasonable reliance and detriment the court's mind will turn to remedy. Following the majority in the Supreme Court the analysis in future cases should be:

> (1) What was promised? That is the starting, and often the end, point of identifying the correct remedy.
> (2) If the triggering event for the promise (usually a death) has not yet occurred, what discount should be applied for the accelerated receipt?
> (3) [if the defendant raises the point] what was the value of the claimant's detrimental reliance?
> (4) Would a promise based remedy be out of all proportion to the value of the detrimental reliance? In determining this the court will need to be wary of applying a merely financial comparison particularly bearing in mind the low wages paid for agricultural labour and caring responsibilities and the high capital values of property.
> (5) If it would be out of all proportion what should be ordered instead? The court need not go to the value of the detriment but must instead do the best that it can.

Jennifer Meech