

Proprietary Estoppel & Licences Acted Upon

References:

Grey & Grey; Elements of Land Law (4th Edn)- “ELL”

Megarry & Wade; The Law of Real Property (Sweet and Maxwell, 7th edn) – “M&W”

Proprietary Estoppel

There are two parties:

- The landlord – here the Defendant (“LL”)
- The licensee – here the Claimant (“C”)

Proprietary Estoppel (“PE”) is founded in equity, and comes into play when there is an assertion of strict legal rights by the LL which is found by the courts to be unconscionable. [LL, 10.208]. The modern view of a generalised or overarching formula of conscience, rather than a view restricted to strict technical formula, is found in Taylor Fashions Limited v Liverpool Victoria Trustees Co Ltd [1982] QB 133 by the dicta of Oliver J. The essential test is whether the assertion of strict legal rights would be unconscionable.

There are three elements to Proprietary Estoppel (“PE”), namely:

- (1) Representation/ Assurance of Rights – flowing from the LL;
- (2) Reliance/ Change of Position – by the C;
- (3) Unconscionable Disadvantage/ Detriment - suffered by the C.

[LL, 10.174]

The inchoate (or unperfected) equity is brought into being when the landowner unconscionably sets up his rights adversely to the legitimate demands of the estoppel claimant (ie C) and it is up to the court perfect or vindicate equity. **“Equity looks to be done what ought to be done”**[ELL, 10.212].

The court has a flexible discretion to mould relief in order to give effect to the equity [ELL, 10.220]. But it is guided by the principle that the relief should be the minimum equity required to do justice to the C; **“To do equity and no more than equity.”** [ELL, 10.221]. For example, specific performance would be appropriate where the representation for the entitlement persists over many years and C undergoes prolonged onerous efforts. [ELL, 10.224].

There are various types of PE, one of which is the “common expectation” case, also known as “estoppel by encouragement” or the fostering of expectations in the minds of both parties. [ELL, 10.196]. “[Parties have] consistently dealt with each other in such a way reasonably to cause [C] to rely on the shared supposition that he would acquire rights of some kind in [LL’s] land....[and it is] unconscionable to permit [LL] to frustrate the substance of the common expectation.” [ELL, 10.194]. There must be, in LL and C, shared assumptions as to their future rights and recognisable factual and legal prejudice caused. [ELL, 10.269]

‘No public body or agency can be stopped by reason of representations made by it, from performing a duty imposed by statute or from exercising a discretion conferred by legislation.’ Private law estoppels has no proper role to play in the public arena. [ELL, 10.284]

Case law:

- Plimmer v Mayor etc of Wellington (1884) 9 App Cas 699 – licence case [ELL, 10.197]
- E R Ives Investments Limited v High [1967] 2 QB 379 [ELL, 10.198]

The Representation

The relevant assurance/ representation creates an expectation that [C] will become owner of some interest or entitlement which would not otherwise be his; the scope should be identified with reasonable certainty. Assurances must always be certain as to the existence or inevitability of the representee's entitlement [ELL, 10.236]

Case law:

- Lloyd v Dugdale [2022] 2 P&CR 167 – lease case
- Inwards v Baker [1965] 2 QB 29 – licence case [ELL, 10.239]

Detrimental Reliance/ Change of Position/ Acts of Reliance

'It is the element of prejudice to the representee which confers legal significance upon the parties' dealings and renders unconscionable that the relevant assurance should be subsequently withdrawn...' [ELL, 10.256]

There must be a legal and factual disadvantage caused to C [ELL, 10.258]

The representation must:

- Have induced/ influenced C's conduct [ELL, 10.259]
- Be an operative factor in bringing about the change of position [ELL, 10.261]
- Acts undertaken must be 'distinct and substantial' [ELL, 10.262], such as improvement of realty [ELL, 10.263].

Other acts of reliance can include:

- Contribution of labour and/ or service;
- Undergoing any sacrifice which is not exclusively emotional significance ;
- Foregoing opportunities for alternative employment;
- Failure to purchase or retain other land;
- C deprived themselves of the opportunity of trying to better themselves. [ELL, 10.265]
- Any intangible personal sacrifice [ELL, 10.267]

Remedies

Remedies are flexible and for the court's discretion but can include:

- Specific enforcement of the original promise of rights
- Money compensation;
- Injunction restraining LL's exercise of adverse rights [ELL, 10.287]
- Granting or confirming such entitlements as a leasehold [ELL, 10.292]
- Irrevocable or 'equitable' licence to occupy land for (1) life or (2) shorter period [ELL, 10.294]

There must be proportionality between the remedy and the detriments ("minimum equity") [ELL, 10.290]

Licence Acted Upon

Also known or referred to as: licence coupled with equity, irrevocable licence.

Ingredients

- Where LL grants a licence to occupy,
- C enters occupation and does work or alters his/ her position to his/her detriment
- The LL cannot revoke licence at will

A licence once acted upon cannot be revoked (Winter v Brockwell (1807) 8 East 308, Lord Ellenborough CJ. The doctrine differs from proprietary estoppel in that it is a common law, not equitable, doctrine. It is unreasonable for C to incur expense in reliance upon LL's licence, and for LL then to revoke that licence and treat C as a trespasser [M&W, 34-012]

Case law:

National Provincial Bank Ltd v Hastings Car Mart Ltd [1964] Ch 665.

Can be founded on proprietary or equitable estoppel. An equity may arise in C's favour even if he is a trespasser. [M&W, 16-037]. 'It is a means by which C may obtain relief (commonly in the form of the grant of some proprietary right) where he has acted to his detriment in reliance upon some expectation created by [LL].' [M&W, 16-037]

One form of relief which the court may give is to declare C's licence irrevocable or revocable only on terms or after a period of time. [M&W, 16-037].

The common law doctrine has been largely eclipsed by the equitable doctrine of proprietary estoppel. [M&W, 34-012].

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