

Neutral Citation Number: [2016] EWCA Civ 275

Case No: B2/2014/4271

**IN THE COURT OF APPEAL (QUEEN'S BENCH DIVISION)
ON APPEAL FROM LEEDS COMBINED COURT CENTRE
(RECORDER CAMERON)**

Royal Courts of Justice
Strand
London, WC2A 2LL

2 March 2016

B e f o r e :

**MASTER OF THE ROLLS,
THE RT HON. LADY JUSTICE SHARP, DBE
and
THE RT HON. LORD JUSTICE HAMBLÉN**

Between:

LIDEN

Respondent

- and -

BURTON

Appellant

**Mr Andrew Nixon (instructed by Reeds Solicitors) appeared on behalf of the Appellant
Mr Adam Wilson (instructed by Harrington Solicitors) appeared on behalf of the
Respondent**

LORD JUSTICE HAMBLÉN:

Introduction

1. This is an appeal against a decision dated 26 November 2014 of Mr Recorder Cameron sitting at Leeds County Court, whereby he decided that a residential property at Willow Beck, Notton, near Wakefield ("Willow Beck") was held on trust under the terms of which the first £33,522 in equity is held for the respondent, Ms Liden. The judge held that Ms Liden acquired this interest as a result of a proprietary estoppel.

2. The appellant, Mr Burton, appeals against that decision, contending that there was no proper or sufficient evidential basis for a finding of proprietary estoppel. Permission to appeal was given by Lewison LJ “on the basis that no challenge may be made to the judge’s findings of primary fact (although the inclusions and inference that he drew from his findings of primary fact may be challenged)”.

Factual background

3. The following factual summary is taken from the findings made by the judge.
4. In 1995 Mr Burton was working in Sweden and met Ms Liden, who is a Swedish national. At that time Mr Burton was married but separated from his wife. Mr Burton and Ms Liden began a relationship and lived together in a rented property in Sweden from 1995 to 2001. Mr Burton returned to the UK in 2001 and resumed living at Willow Beck. He and his wife were joint owners of Willow Beck, having purchased it together in the 1980s.
5. Ms Liden followed Mr Burton to the UK and lived with him at Willow Beck from 2001 until June 2013 when she left in circumstances of some acrimony. Mr Burton and his wife divorced in 2002. The divorce involved Mr Burton agreeing to an ancillary relief order whereby he would pay his former wife a further sum of £37,500, which liability he discharged by buying a new house for her. In exchange, Willow Beck was transferred into his sole name on 8 November 2002.
6. Mr Burton funded the payment of the £37,500 by a mortgage on Willow Beck. There was also an earlier mortgage on the property and on 5 April 2008 all the borrowings were consolidated into a single interest-earning mortgage of £70,005. A further advance of £20,000 for business purposes was taken out by Mr Burton in September 2009, and at the time of the trial the outstanding balance was about £98,000. Willow Beck appears to have been worth between £210,000 and £245,000 in 2002 and at the time of the trial was on the market for £435,000.
7. Both Mr Burton and Ms Liden gave oral evidence at the trial. Ms Liden’s evidence, which the judge accepted, was that from 2001 she paid Mr Burton £500 per month as a contribution towards the expenses of running and maintaining the property. The judge found that the circumstances in which these payments came to be made gave rise to a proprietary estoppel.
8. There was a stark conflict of evidence between Ms Liden and Mr Burton in respect of the monthly payments which Ms Liden said she made. Mr Burton denied receiving any such payments. The judge preferred Ms Liden’s account in respect of the payments and her evidence generally. He found Ms Liden’s account to be “correct”. He made the following primary findings of fact:
 - (1) Ms Liden’s income was from a pension paid by the Swedish authorities on account of her having suffered an injury.
 - (2) During Mr Burton’s divorce proceedings he was concerned that might not be able to afford to keep Willow Beck and Ms Liden agreed to help out. This initial conversation was even before they left Sweden
 - (3) It was represented to Ms Liden that the property was expensive to run and that they could only afford to live there if she made some payments.
 - (4) On this basis she began the payments of £500 per month, which was half approximately of all her pension.

- (5) Ms Liden was initially unaware of the mortgage. When she asked Mr Burton how the money was spent he would describe it as rent and other outgoings. She challenged the description of rent and 'he apportioned it in response to that challenge as "£200 towards the house"'.
 - (6) When she found out about the mortgage in 2002 he again agreed that it was 'towards the house.'
9. The judge also accepted the slightly more detailed account of Ms Liden set out in her witness statement at paragraphs 10 to 12, which includes the following:
- "10. Michael was unable to afford the outgoings on the house and in particular he struggled with the mortgage payments ... I do not know if he had to re-mortgage to pay out his ex-wife, but he made it plain to me that we could only live at the house if I made a financial contribution. He told me it would be too expensive for him otherwise. I agreed to this, and almost from the start I paid him £500 per month from my benefits...
 11. I made this contribution because Michael told me on numerous occasions that we would be together for the future, that this would be our home and that he would look after to me forever. He told me 'you have to contribute wherever we live, so why not pay for my house?' He also me that I would be a beneficiary of his will ... I would not have made these payments to him if I believed that he would have treated me in this way and would not have made provision for me for the future.
 12. On a few occasions I asked Michael how the money that I paid him was spent. He broke it down into 'rent' and other outgoings. I challenged this description, telling him that I was not a tenant and he then said 'it is £200 towards the house though'. I was never a tenant of the property. At first I did not know that there was a mortgage on the house and when I did find out in 2002 I directly tackled him about it. I said 'it is towards the house then, isn't it?' and he agreed."
10. An issue arose at trial in relation to a document signed by Mr Burton stating that "this is to verify that Kristina Liden pays rent of £500 per month. This payment has been made every month since 2001". It was found that Ms Liden typed the document as being one she wanted in order to acknowledge the payments being made and that its terms had been discussed immediately before it was typed. She denied the payments could properly be described as "rent" and the judge found the explanation of the use of that word to be that these were the terms to which to Mr Burton was prepared to sign but that it involved no waiver by Ms Liden of rights she may have had in the property.
11. There was also a dispute about whether Mr Burton ever proposed engagement. The judge found that he had done so and that he had bought an engagement ring for Ms Liden in 2003.
12. In the light of his findings and the evidence generally the judge found that "the payments were to enable, based on what Mr Burton had told her, the house to be retained, and when he attempted to describe it is rent she [Ms Liden] challenged that description and got a no doubt grudging acknowledgement that it was 'towards the house'". He also found that the £500 per month payments were made in reliance on these matters and what Mr Burton had said to her. He further found that if Ms Liden had known the true position she would have made no payments towards the house, towards the mortgage, and could have invested money elsewhere.

The judge's conclusions

13. The judge concluded that Mr Burton had induced, encouraged or allowed Ms Liden to believe she was obtaining an interest in the property, that the monthly payments were made in reliance

thereon, and that it would be unconscionable for Mr Burton to deny Ms Liden an interest in the property.

14. In the circumstances, he held that the requirements of proprietary estoppel were established. He further held that the minimum equity to do justice between the parties involved the property being held on trust for Ms Liden, under the terms of which the first £33,522 of equity is held on trust for her.
15. The figure of £33,522 reflected a refund of contributions and was arrived at on the basis that if Ms Liden had known the true position she would have made no payments towards the house and could have invested the money elsewhere. The sum potentially so available was identified as £200 per month of the £500 she was paying. This resulted in the principal sum of £28,800, to which was to be added interest at three per cent on a rolling basis, resulting in a total interest figure of £4,752.

Proprietary estoppel

16. The judge noted that *Snell on Equity* (32nd edition) observes that “there is no definition of proprietary estoppel which is both comprehensive and uncontroversial”. With that warning in mind, he referred to the way the essential elements of proprietary estoppel are summarised in *Megarry & Wade* (8th edition) at pages 711-712:

“Without attempting to provide any exclusive definition, it is possible to summarize the essential elements of proprietary estoppel as follows:

- (i) An equity arises where:
 - (a) the owner of land induces, encourages or allows the claimant to believe that he has or will enjoy some right or benefit over the owner’s property;
 - (b) in reliance upon this belief, the claimant acted to his detriment to the knowledge of the owner; and
 - (c) the owner then seeks to take unconscionable advantage of the claimant by denying him the right or benefit which he expected to receive.”
17. That these are the three main elements of proprietary estoppel was affirmed by the Supreme Court in *Thorner v Major* [2009] 1 WLR 776 per Lord Walker at [29], with whose judgement Lord Roger and Lord Neuberger agreed. In that case it was emphasised that whether an assurance is sufficiently clear to found a proprietary estoppel is “hugely dependent on context” – per Lord Walker at [56].
18. Counsel for Mr Burton submits that (1) the assurance must be sufficiently clear and unambiguous; (2) the nature of the terms of any benefit must be certain; (3) there must be a sufficient link between the assurance relied upon and the conduct which constitutes the detriment; and (4) the detriment must be more than insubstantial.
19. As to (1), it must be “sufficiently clear,” – per Lord Walker at [56]. As to (2), it must relate to identify the property, but even where there is “some uncertainty, an equity could rise and could be satisfied either by interest in land or in some other way” – per Lord Walker at [64]. As to (3), there is a need to establish reasonable reliance and resulting detriment – per Lord Walker at [29]. As to (4), the detriment needs to be “sufficiently substantial to justify the intervention of equity” – per Lord Scott at [15].

The issues

20. The issues which arise on the appeal may be stated as follows: (1) whether the judge wrongly applied the law to the facts as found; (2) whether the judge erred in the exercise of his discretion in giving effect to the equity.

Issue (1): whether the judge wrongly applied the law to the facts as found.

21. On behalf of Mr Burton it is submitted that:
- (1) The assurance that the payments were going “towards the house” is (a) not sufficiently clear and unambiguous, and (b) does not amount to an assurance of beneficial interest;
 - (2) This assurance was given after the payments had commenced and therefore there is no sufficient link for reliance.
 - (3) There can be no basis for an assurance conferring an interest in property once the “rent” document was signed in 2002.
 - (4) £200 per month is too insubstantial an amount to constitute detriment.
22. On behalf of Ms Liden it is submitted that on the basis of the judge’s findings he was entitled to conclude that there was sufficient assurance, detriment and reliance to give rise to a proprietary estoppel and that his conclusion cannot be said to be wrong in law.
23. It is to be noted that the judge heard the oral evidence and that this was a case involving significant credibility issues. The judge clearly preferred the evidence of Ms Liden on all material matters.
24. It is also right to note that the judge directed himself correctly in law and that his conclusion was that the essential elements of proprietary estoppel were made out. In particular, he considered that the requisite assurance was “plainly” made out on the facts as he had found them to be. Context is “hugely important” as to whether an assurance is sufficiently clear, and the judge was best placed to evaluate that issue, having had the advantage of seeing and hearing the witnesses.
25. An appellate court will be reluctant to overturn conclusions of a trial judge on fact-sensitive issues which have been reached having regard to the correct legal principles.
26. In my judgement, the conclusion reached by the judge was open to him on the basis of the findings and the evidence.
27. Mr Burton’s case on appeal focuses very strongly on the assurance that the payments were going “towards the house”. This, however, is to ignore the earlier findings made by the judge.
28. The judge found that from the outset Ms Liden was told that the payments were needed if the house was to be kept, and that was the only way they were going to be able to live there. The payments were necessary if the house was “to be retained” for them. Although she did not know the details of Mr Burton’s mortgage arrangements, she knew that he was an owner of the house and that her payments were needed if the house was to be kept for the benefit of both of them. At the time, Mr Burton was saying that they would always be together, as borne out by his proposal of engagement.

29. Against that factual background, it was open to the judge to conclude that Ms Liden would reasonably have understood that her necessary payments were in return for an interest in the house that they were and would be sharing.
30. This understanding would have been confirmed by the exchanges about why she was not a tenant and how her payments were “towards the house”. This would reasonably have been understood as meaning towards ownership of the house, given the context was that they were necessary for ownership to be retained. This was clarification and confirmation of assurances already given, rather than, as the appellant argues, the first relevant assurance.
31. In my judgement, the judge was entitled to conclude that when properly considered in their context the statements made by Mr Burton were a sufficiently clear assurance to found a proprietary estoppel. If that is so, there is no difficulty about reliance. On the judge’s findings, this was the basis upon which the payments were being made from the start.
32. There is also no difficulty about detriment. £200 a month over many years is a substantial sum of money. As the judge found, if Ms Liden had known the true position she would not have made those payments. The combination of reliance and detriment leads to and justifies the conclusion of unconscionability.
33. There is also no substance in the suggestion that anything was changed by the signing of the “rent” document. On the judge’s findings, this did not mean rent properly so called. On the contrary, the exchanges at the time confirmed that the payments were not rent but rather were going towards ownership of the house.
34. In summary, the judge directed himself correctly in law, addressed the evidence in an appropriate manner and reached conclusions which were open to him on the basis of his findings and the evidence.

(2) Whether the judge erred in the exercise of his discretion giving effect to the equity.

35. The court has a wide discretion of deciding how best to give effect to the equity. The judge made a reasonable deduction of part of the sums paid by Ms Liden to Mr Burton which he considered as being in respect of items for Ms Liden’s direct benefit. The judge’s findings on the rate of return Ms Liden would receive over the relevant period had she invested the sums for her benefit fall well within findings a trial judge is entitled to make based upon the evidence before him and his own general knowledge. It cannot be said that the judge did more than the minimum required to do justice between the parties. In all the circumstances, no error in the exercise of his discretion has been established.

Conclusion

36. For the reasons outlined above, I would dismiss this appeal.

LADY JUSTICE SHARP:

37. I agree.

LORD DYSON:

38. I also agree.

Order: Application refused