

IN THE HIGH COURT OF ENGLAND AND WALES

(CHANCERY DIVISION)

CLAIM NUMBER: 2024/840A3

BETWEEN:

SARAH MORGAN

Claimant

-and-

JENNIFER WILLIAMS

Defendant

Skeleton argument on behalf of [Jennifer Williams]

1 Introduction

The purpose of this skeleton argument is to prove that the defendant Jennifer Williams does not owe any beneficial trust to the claimant Sarah Morgan. I am seeking for the judge to strike out this claim as the defendant clearly has never intended to create a beneficial interest with the defendant on the property.

2 The issues

The issue pertaining to this case is that there is no constructive trust entitled to Sarah Morgan. In this regard it can be proven that there is no common intention or beneficial interest within the property. Therefore Sarah has not in reliance of common intention acted to her own detriment. Following on from this. Following on from this proprietary estoppel does not apply as no representation or assurance was properly or legally made to Sarah indicating she would gain

interest in the property. Therefore again Sarah cannot claim reliance on such a representation or assurance or that she acted to her detriment.

3 The facts

The Property in question is fully purchased with no mortgage in Jennifers name prior to meeting and getting in a relationship with Sarah 'Jennifer purchased this property in 1995'. When the claimant and defendant went to the solicitor to create mutual wills they were clearly informed and urged to create an express trust yet declined to create one. Sarah has not faced any detriment in regard to living within the property as when tasked with quitting her job 2006 Jennifer took over all bills and paid half of her tuition fees. Following on from that after the significant storm damage to the building it was not mandatory for Sarah to pay for the repairs as seen in 'I can't ask you to do that' from the text message transcript 2018. To further this point it can be argued that the need to pay for repairs in the first place is due to negligence by Sarah 'Jennifer "Yes! You were meant to be sorting it?" Sarah "I thought it was set up?"'.

4 The law

To begin for a constructive trust two elements must be here expressed or implied common intention and that the claimant relied on this to a detriment. The claimant does not meet either of these as in regard to common intention *Hudson v Hathway* (2022) shows that it must be explicit when communicating intention. The current text messages provided are too vague. Following from this as seen in the case *Oxley v Hiscock* (2004), for beneficial intent it does not have to be words spoken, it can be based on the actions of the individual. As seen in this case despite a few text messages, the actions of the claimant tell a different story, such as refusing when the opportunity to get an express interest via the solicitor and also in the will stating both of their estates will be shared between their children if they were to separate. Following on from that is detriment and as seen in the case *Hameed v Qayyum* (2008) if one voluntarily enters an agreement/ or action that cannot be seen as a detriment, such as Sarah paying for the repairs and renovations voluntarily.

5 Submissions

They clearly knew interest in the property was important yet despite multiple opportunities did not clearly get an express interest. *Oxley v Hiscock* (2004) outlined that one way to gain beneficial interest is to look at the actions of the parties. In this case they never acted with said intention, whether in person with the solicitor, the email reminder and their texts. It is clear neither was interested in creating an express interest for the claimant.

The claimant has not had any detriment through the property in question as volunteering can not be considered a detriment. As seen in the case *Hameed v Qayyum* (2008) if volunteering for an action, this can not be used to gain beneficial interest. In this case similar to *Hameed v Qayyum* (2008) Sarah choosing to pay for the repair and refurbishment would not constitute a detriment. Following this point even if the defendant demanded that it would still not count as a detriment due to the reasonable assumption the claimant's negligence caused the issue with insurance. 'Jennifer "I can't believe it! The insurers won't pay! They say we've not paid the Direct Debit in 3 months" ... Jennifer "Yes! You were meant to be sorting it?"'

To begin the Property is in Jennifer's name making her the sole owner. For the claimant to gain constructive trust they first must prove common intention. In the case *Hudson v Hathway* (2022) common intention was used to grant common intention through emails. As Mr Hudson in that case expressly stated lines such as 'The liquid cash, you can have. Savings in the bank, other plans, take it all. Physical property, the contents of the house ... again I don't want it; keep it.'. Through that and at the end of each email expressly displayed his intention. Whereas in this case it is left more vague such as 'You've got nothing to worry about x'. This is also seen in the case *James v Thomas* (2007).

6 Conclusions

In conclusion regarding constructive trust the claimant is unable to meet both pre requisite conditions to gain a beneficial trust. There is no common intention or detriment within this case.

7 The law

For a proprietary estoppel to take effect four conditions must be met. In this Case that does not occur. The first condition necessitates that the defendant gave an assurance they would have a claim in the land, this has not occurred. This means that the claimant has been under the impression that at some point in the future they would gain a right to said property. Secondly the claimant has not suffered a detriment whilst relying on said assurance. This means that the claimant has put themselves at a loss in some way with the thought that it will benefit them in the future thanks to said false assurance. Thirdly it considers whether it would be unconscionable for the landowner to refuse the claimant's right. The term unconscionable is used as a way of stating how unfair it would be for the claimant. This is due to this piece of law being related to equity meant to benefit rather than harm. In this case that is not an issue as the claimant has no right to the property in question. The fourth condition is for all three to be unified by the unconscionability as seen through the case *Yeoman's Row Management Limited v Cobbe* [2008]

8 Submissions

In regard to proprietary estoppel the defendant has never made an assurance of a future claim to the land. In fact in regard to separation it was agreed that the property would go to the children not each other. Unlike in the case *Thorner v Major* (2009), there was no concrete assurance. In this Case the claimant was explicitly told repeatedly and it was even added into

the will at one point. Despite the assurance being removed from the will the court still granted the proprietary estoppel. In this case despite the wishes being different there is a clear lack of assurance to the claimant, and very explicit writing within the will on what is intended. This is further shown through the case *James v Thomas* in which it was determined by the court of appeals that lines such as 'well provided for' do not constitute enough to be assurances.

Second in regard to detriment, the claimant was explicitly told they never had to fund the repair/ refurbishment, they also have never paid rent and all groceries were paid through joint bank accounts. An example of an actual detriment can be seen in the case *Thorner v Major* (2009) due to the amount of free labour used under the false assurance of ownership, following on another example is *Yeoman's Row Management Limited v Cobbe* (2008) in which Cobbe stood to lose a lot of money. Both of these cases display great loss from both claimants, the difference when compared to the current case is that Sarah the claimant has not placed herself in any detriment in the use of the property. Sarah has only benefited, even when living in their rented property half of the bills were paid by the defendant.

In terms of would it be unconscionable for the defendant to refuse the claimant's right, the answer is no. As the claimant has no right to this property. Unlike in the case *Yaxley v Gotts* (2000) where to deprive the claimant would be unconscionable due to the underhanded trick of the defendant that is not the case here. Looking at the big picture the claimant was well taken care of and had a long opportunity to create an express trust, they faced no detriment and did not have any concrete assurances.

9 Conclusions

In conclusion the claimant of this case has not met the requirements for a proprietary estoppel, therefore this claim is baseless

10 Overall conclusions

Overall in regard to constructive trusts, the claimant is unable to prove firstly the intention and secondly that they have faced any type of detriment. Secondly in regard to the proprietary estoppel the conditions required for this are similarly not met. Due to this I would like for the court to strike out this claim as it has not been made with good intentions.

George Jones

Defendants Solicitor

Work/chambers

Date 06/12/24

Case note

Hudson v Hathway

EWCA Civ 1648

Court of Appeal

Parties

Lee Hudson (Appellant)

Jayne Hathway (Respondant)

Procedural History

First Trial, Respondant Successful

Appeal from the high court of justice, King's Bench Division Respondant Successful (Appeal dismissed)

Material facts

Mr Hudson and Ms Hathway were in a relationship and purchased a house together. Mr Hudson left leaving Ms Hathway with the house. In 2019 Mr Hudson wants Ms Hathway to sell the house. Ms Hathway uses constructive trust and proprietary estoppel detriment as a way to increase her share of the property.

Legal questions for the court

The question asked to the court for this case was, is detrimental reliance necessary for a change in equitable share.

Appellant arguments

The appellants argument was that the respondent had weak 'non-claims' against Mr Hudsons assets. Therefore there was no need for Ms Hathway to make claims against him

Respondent's arguments

The argument would have been that Ms Hathway and Mr Hudson had a common understanding that all assets gained during their relationship were joint assets, due to this reliance on an understanding a constructive trust had arisen. However this may have been her only prospective claim as other options have been lost due to time.

Ms Hathway's claim would have been that she and Mr Hudson had a common understanding that assets accumulated during their relationship were joint assets and that, in reliance on this understanding, a constructive trust had arisen in relation to those assets.

Decision of court

Allowed

Rule of law

The court sided with the current trend in general when it comes to detrimental reliance. Basically saying that it is necessary, when looking at changes to equitable shares. This follows the same trend as many other cases.

Reasoning

Detrimental reliance is useful as it is a necessary requirement that allows greater flexibility in the legal system. Without it certain enforceable agreements would no longer be available to judges. Landmark cases such as Stack v Dowden and Jones v Kernott are while useful can only be used in certain ways.

Word count: 1940

References

- Allen, A. (2023). Detrimental reliance and the dangers of emails: Hudson v Hathway [2022] EWCA Civ 1648. [online] Gatehouse Chambers. Available at:

<https://gatehouselaw.co.uk/detrimental-reliance-and-the-dangers-of-emails-hudson-v-hathway-2022-ewca-civ-1648/>

- Hameed v Qayyum [2008] EWHC 2274
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- legislation.gov.uk (2019). Law of Property Act 1925. [online] Legislation.gov.uk. Available at: <https://www.legislation.gov.uk/ukpga/Geo5/15-16/20/contents>.
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- Stack v Dowden [2007] 2 AC 432
- Thorner v Major [2009] UKHL 18
- Yaxley v Gotts [2000] Ch 162
- Yeoman's Row Management Limited v Cobbe [2008] UKHL 55