



**5 Stone
Buildings**

Proprietary estoppel awards after *Guest v Guest*

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Guest v Guest [2020] 1 WLR 3480

- How has *Guest v Guest* changed current thinking on how the court determines an award in proprietary estoppel case?
- What is realistic and achievable for your clients?

Existing case law

- Aim is to do the minimum necessary to do justice
 - *Crabb v Arun District Council* [1976] Ch 179, at 198G

- Proportionality lies at the heart of proprietary estoppel and its application
 - *Henry v Henry* [2010] UKPC 3, at [65]

Existing case law

- Justice will not be done if relief is out of all proportion to detriment
 - *Suggitt v Suggitt* [2012] WTLR 1607, at [43]-[44]

- Arguable that proportionate approach is to grant only such limited relief as is required to remove the detriment
 - *Davies v Davies* [2016] 1 P&CR 10, at [39]

But...

- If a reasonably clear mutual understanding has been reached, the Court's natural response is to fulfil the expectation
 - *Jennings v Rice* [2003] 1 P&CR 8, at [50]

Guest v Guest - facts

- 1981: Will divided between C & brother equally (pay 1/5 value to sister)
- 1982: C left school at 16 and worked on farm full-time
- 1989: Granary Cottage built for C's occupation
- C's earnings modest but higher than father & brother
- 2007: FBT of neighbouring farm taken & farming integrated
- 2008: relationships falter (over wages)

Guest v Guest - facts

- 2012:
 - brother enters into partnership with parents over FBT (50:25:25)
 - C enters into partnership with parents over main farm (50:25:25)
- 2014: Will changed to exclude C
- 2015: partnership dissolved
- 2017: C given notice to quit Granary Cottage

Guest v Guest - relief sought

- Particulars
 - Entitlement to whole of main farm & farming business (or such other relief as Court thought fit)
- Opening
 - Transfer of Granary Cottage & 50% farm & assets (but 100% business) OR
 - Capital payment equal to 50% value of farm & business
- Closing
 - Capital payment equal to 40% value of farm & business

Guest v Guest [2019] EWHC 869 (Ch)

- Principles
 - C must identify property, but permitted some uncertainty as to scope of expectation (i.e. specific interest) [144]
 - Essential aim is to give effect to the expectation unless disproportionate to do so [148]
 - Proportionality covers benefits to C and burden on Ds
 - C cannot claim proprietary remedy more valuable than the one assured, even if detriment exceeds [155]

Guest v Guest [2019] EWHC 869 (Ch)

- Decision: 50% value of business & 40% value of farm
 - After tax (proportionality / price for acceleration?)
 - Farmhouse treated as subject to life interest of parents (ditto?)
 - (Re)introduction of brother into farming business not inconsistent with assurances to C of succession (to sufficient interest to farm) [241-245]
 - Must look backwards from moment assurance fell to be acted upon (so post-fall out employment immaterial) [280]
 - No quasi-contractual mutual understanding
 - Falling out requires clean break

Guest v Guest [2020] 1 WLR 3480

- Grounds of appeal
 - Judge failed to determine extent of equity in C's favour
 - Judge failed to consider remedy by reference to what objective bystander would have concluded Ds intended in making their assurances
- Appeal dismissed
 - Intermediate stage between (i) whether equity arose and (ii) how to be satisfied not necessary
 - Objective bystander took into account all circs, not just Ds' point of view

Guest v Guest [2020] 1 WLR 3480

- Detriment by way of lost opportunity of better wages is not limited to quantifiable difference in wages, so often just to award greater sum [82]
- Judge had been able to reach finding that clear enough assurance made and that C had largely performed acts requested in return: although not quasi-contractual, expectation a strong factor [86]
- Wide bounds of discretion permits acceleration of assured inheritance [88]

Davies v Davies [2016] 2 P&CR 10

- Various expectations, including lifetime share in business and inheritance of business and land
- Had worked on farm but also away from farm during fallings out
- Claimed: business and land
- Awarded:
 - First instance: £1.3m (whole farming enterprise net of CGT c.£3.15m)
 - Appeal: £500k
 - Did not always expect to inherit land
 - More than meets other expectations

Thompson v Thompson [2018] EWHC 1338 (Ch)

- Always expected whole farm (only son)
- Dedicated life of long hours for minimal pay to farm
- Claimed: D's 2/3 of farm (C entitled to 1/3 under partnership)
- Awarded: whole of farm on mother's death
 - Mutual understanding case
 - No clean break even though bitter division
 - Life interest for D

Gee v Gee [2018] 1 FLR 219

- Expected to inherit “the lion’s share” of the farm,
- Devoted working life to farm, working long hours
- Claimed: 23,999 of 24,000 company shares & 7/18 land
 - C owned other share and 7/18 land, both gifted by mother (prepared to return)
 - Company owned other 4/18
- Awarded: end result 52% shares (to give control) & 46% land (balance held by parents, not company)

Moore v Moore [2019] WTLR 233

- Expected to inherit father's interest in farm, subject only to adequate provision for mother
- Awarded:
 - First instance: transfer to C, subject to right of occupation and weekly payment to Ds
 - Appeal: remitted subject to guidance
 - Transfer to C
 - Lump sum to mother to rehouse herself and live comfortably
 - C to meet father's care costs and any resulting tax

Habberfield v Habberfield [2019] EWCA Civ 890

- Expected to take over on retirement and inherit on death
- Claimed: whole farm
- Awarded:
 - First instance: £1.17m cash from farm worth £2.5m (clean break & avoid splitting off farmhouse)
 - Appeal: affirmed
 - Would leave D with enough to rehouse self and make up lost income

Conclusions

- *Davies v Davies* correctly summarises law
- No need to wait until death
- Expectation of greater weight than (quantifiable) detriment
 - Identified in broad terms
 - ‘Downgrading’ will not prevent satisfaction at lowest level, but ‘fluctuation’ might?
- Must take into account D’s position, but not shape remedy from only their perspective
- What about surviving spouses and siblings?

Conclusions

- Focus on real expectation
- Aim for acceleration
- Be realistic about consequences for Ds (clean break?)



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Thank you

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