# Southwell v Blackburn [2014] EWCA Civ 1347

This is a useful case when looking at the findings that a court makes in relation to the criteria for establishing and satisfying a party’s equitable interest in a property under the doctrine of proprietary estoppel.

The court at first instance found that the parties had met when the Respondent was divorced with two young children. She had had limited resources after the marriage and she had secured a rented house upon which she spent some £15,000 to £20,000 in terms of fitting out and furnishing. After a few years of meeting the parties started to live together as couple in a property which was purchased in the Appellant’s sole name by way of his deposit and a mortgage in his name.

The conclusion of the first instance judge was that it was most unlikely that the Appellant would have or did make any clear promise to the Respondent that she would become an equal owner in the house with him or that he had promised her that she would at some future date. As such the judge did not find that there was a constructive trust. However, the judge did find that she had an equitable interest under the doctrine of proprietary estoppel. This was on the basis that it was found that although the discussions between them were not specific as to ownership of the home that they were specific as to the nature and extent of his commitment to her and the provision of secure accommodation for her.  He promised her secure rights of occupation at the house that they were in effect buying together, although in his sole name.  He led her to believe that she would have the sort of security that a wife would have, in terms of accommodation at the house, and income and that the Respondent relied on that.  Without such promise and assurance she would not have given up her house and moved in with him. The decision of the court was to award the Respondent £28,500 to be paid by the Appellant pursuant to her having established a proprietary estoppel.

There were three separate grounds of appeal, which were all in turn rejected. The first ground was that the assurances found proved by the judge in relation to the Respondent's security of tenure lacked the requisite specificity to engage the doctrine of proprietary estoppel.

Tomlinson LJ found that the thrust of the findings that the first instance judge had made was to the effect that the Respondent would have an entitlement which would be recognized in the event of breakdown of the relationship, just as would be the contribution of a wife to the assets of a marriage in the event of marital breakdown.

The second ground of appeal was that the judge had erred in finding that the Respondent suffered detriment in reliance on those assurances, asserting that such detriment as may have been initially incurred by the Respondent in giving up a secure tenancy and moving in with the Appellant was dissipated over the course of the relationship, which lasted for about nine years.

Tomlinson LJ relied upon the first instance judgment where it was concluded that it would be unconscionable for the Defendant to do anything other than to seek to put her back in much the same position as she was before she gave up her own house. Tomlinson LJ acknowledged that whilst the Respondent had benefited during the course of the relationship, so had the Appellant. He concluded that the essence of the promise here upon which the proprietary estoppel was sought to be based was that the Respondent should have a home for life, on the strength of which she gave up her own secure home in which she had invested about £15,000 and in turn invested £4,000 - £5,000 as her contribution to the setting up of the new home in which she was to live with the Appellant. Therefore, there was a causal link between the assurance relied upon and the detriment asserted.

The third and final ground of appeal was the judge was wrong to find that the Appellant acted unconscionably in denying to the Respondent the right or benefit that she expected to receive. It was asserted on behalf of the Appellant that the judge had lost sight of the fact that this was not a marriage and so not a relationship which was expected to or intended to endure indefinitely.

Tomlinson LJ found that the focus should be on the promise and the detrimental reliance. The detriment to the Respondent was not that she embarked upon a relationship with the Appellant but that she had abandoned her secure home in which she had invested and invested what little else she had in a home to which she had no legal title

**Prest v Prest [2014] EWHC 3430 (Fam)**

This is a helpful guide to the procedure and statutory framework in respect of the court making a committal order. In this case the Wife was seeking the Husband for his failure to pay sums due by way of periodical payments that had been ordered.

Moylan J set out that the legal framework is that a judgment summons is an application under s.5 of the Debtors Act 1869.  Under this section, a judgment creditor can apply to the court for the committal to prison of a judgment debtor, for a maximum period of six weeks, in respect of, among other orders, a maintenance order.

 Section 5 provides that, "*Subject to the provisions herein-after mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court*."

There is a relevant proviso which sets out that, “*That such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same."*

The relevant rules are contained in the Family Procedure Rules 2010 deal with committal by way of judgment summons under Part 33, Chapter 2, starting at Rule 33.9.  Rule 33.14 (1) provides that no person may be committed on an application for a judgment summons unless the judgment creditor proves that the debtor has, or has had, since the date of the order the means to pay the sum in respect of which the debtor has made default and has refused or neglected, or refuses or neglects, to pay that sum. Rule 33.14 (2) provides that the debtor may not be compelled to give evidence. The burden of proof is on the applicant who has to prove the requisite elements of the charge made in the judgment summons to the criminal standard.
The maximum period of imprisonment allowed is six weeks.

The Wife’s case was that the Husband has not altered his lifestyle or reduced his standard of living in any way.  He continues to live well and spend extravagantly, in particular travelling extensively and expensive holidays. The details of his very high spending on holidays and travel which she provided were known to her because they have involved the children. The Husband’s response was that he was suffering from the total collapse of the trading business which he was involved in and which had provided his salary and bonus.

There were three specific questions that Moylan J had to ask himself. The first was whether the Husband was in default of the £428,200 as alleged by the Wife. He found that the Husband was in default to the sum of £360,200 as he subtracted the amount paid by the Husband from the total amount that was due for the period up until April 2013.

His second question was whether the Wife had proved that the Husband has or has had since 16th February 2012 the means to pay the sums due in respect of the periodical payments. He found that since the 10th February 2012 the Husband had the means to pay the sum of £360,200, for the following reasons:

i.  The Husband had paid sums totally just under £215,000 as set out in his schedule.

ii. The Husband had applied in April 2012 for an extension of time to the Court of Appeal to enable him to pay the sum of £600,000 in order to enable him to pursue his appeal.  Moylan J was satisfied that he would not have made that application if he had not had the funds available to make the required payment.

iii. Although the Husband had given evidence in the form of three statements, he had failed to provide any proper exposition of his financial circumstances.

iv. The case advanced by the Husband as to the collapse of his trading business, as set out in his first statement in answer to the judgment summons, was inconsistent with his case as advanced in 2011.

v. The Wife's evidence as to the Husband's extravagant holiday expenditure incurred in 2012 and 2013 was preferred over the Husband's evidence.

The third question as to whether the Husband has refused or neglected to pay the sum due was found in the positive in light of the above findings.

Mitigation was heard on behalf of the Husband before deciding the penalty. Although he had continued to pay the school fees for the children and also made substantial payments for the benefit of the wife and the children as set out in the schedule produced by him the court considered those payments were made at his election; they were not payments which go towards meeting his obligation to pay periodical payments as required by the Order.  The court also took into account that this was the first application for a judgment summons.

The court imposed a sentence of four weeks which was suspended for a three month period. The Husband was given the opportunity to pay the sums due in that period and no interest was included. If he paid within the three months then the sentence will be suspended entirely.

**H v W (Costs) [2014] EWHC 2846**

This was a successful application by the Husband that an order for costs should be made against the Wife following the Husband's successful appeal against an order made in financial remedy proceedings.

In the application for permission to appeal, Mr Justice Mostyn had given a strong indication that the correct solution to the issue of the Husband’s bonus payment was for there to be a cap on the share received by the wife. The parties were directed to embark upon mediation to settle the issue of the Husband’s bonus payment. The Husband agreed to meet the costs of this mediation at first instance.

However, mediation did not take place as the parties could not agree on a suitable mediator.   Mostyn J was critical of the Wife’s approach to mediation saying it was unreasonable in that she was insisting upon top price mediation and upon her legal representative being present during mediation. The matter progressed to a fully contested appeal and the combined costs in respect of the appeal were approximately £48,000.  The husband's appeal to cap the sharing of his bonus payments succeeded.

Mrs Justice King applying the reasoning in Judge v Judge [2009] 1 FLR 1287 and Baker v Rowe [2010] 1 FLR 761 that an appeal was in connection with and not in financial remedy proceedings and therefore, not subject to FPR r28.3(5) and nor was the court bound by the general rule of costs following the event. The court therefore started with a clean sheet when exercising its discretion as to whether or not to make an order for costs. It was held that the Wife’s application was unreasonable and it resulted in denying the Husband the chance to settle the matter with having the costs of an appeal. The financial impact on the Wife was taken into account but it was found that she would still be able to pay off her debts and rehouse herself.

**Murphy v Murphy [2014] EWHC 2263 (Fam)**

This is an interesting case on the length of term that a periodical payments should be made for in cases where the factual scenario is quite common.

This relationship lasted 8 years encompassing cohabitation and marriage. The Wife was aged 42 and the Husband was 35. They had a set of 3 year old twins which lived with the Wife. In the past the W was a graduate who has worked as a website trading manager earning in the region of £30,000 p.a. The Husband was and had been a high earning businessman.

The capital division, pension sharing and the children’s maintenance has all been agreed and that only outstanding matter was that of the Wife’s periodical payments, although the quantum had been agreed.

The outstanding issues were:

i. whether the initial step-down in the Wife’s maintained should be defined in time and whether there should be further step down thereafter;

ii. Whether the maintenance for the Wife should be paid during joint lives or subject to a term order ceasing when the children finished their secondary education.

The wife’s case was that her training to be a teacher was not going to be viable given her child care commitments and that consequently, a "step-down" in spousal maintenance should not be made, nor should there be an overall term for maintenance.

Holman J looked at whether she ‘would’ under s. 25 of the MCA 1973 be able to adjust without undue hardship at the end of a specific term. He said that it was ‘totally speculative’ to put a figure on what the Wife could be earning in three years’ time. The court decided that maintenance should cease when the wife was aged 57 as she would have limited earning capacity; limited pension and would not receive the state pension until she was 67.
Consequently, and despite the relatively short length of the marriage, the judge declined to make a term order. This was after considering the material change that the presence of the children made.