



The Application of Trust Law Principles in a Proprietary Estoppel Action

Stephen Christie-Miller (Part 20 Claimant) v (1) Samuel John Fielden & 7 others (Part 20 Defendants)

Trustees can often tread a difficult line in their dealings with potential beneficiaries, particularly in circumstances where one beneficiary appears to be in a favoured position. The recent judgment in *Christie-Miller v Fielden & Oths* provides a timely reminder of the possible pitfalls a group of trustees should be on the lookout for.

- Where more than one trustee is appointed for a trust normal working arrangements may result in one of the trustees taking the lead. However, the representations of a “lead” trustee will not bind his fellow trustees unless he is also acting as their agent.
- If a disgruntled beneficiary argues that s/he was promised a benefit by a trustee, it remains unclear whether trustees can avoid fulfilling that promise by arguing they are unable to fetter their own discretion.

Background

The proceedings in question encompass various claims relating to two trust structures, the Will Trust and the Swyncombe Settlement.

The beneficiaries, Samuel John Fielden (“Sam”) and Stephen Christie-Miller (“Stephen”), are in dispute as to the meaning and effect of a deed of appointment executed in 2007 by three Will Trust trustees.

As part of this dispute Stephen has brought a Part 20 counterclaim. That claim is based on proprietary estoppel. Stephen claims that in 1994 he and his family were invited to live on the Swyncombe Estate and that he was told he would inherit both the land held by the Swyncombe Settlement and the land held in the Will Trust. His claim is based on representations alleged to have been made to him by one of the Swyncombe Settlement trustees.

Basis of summary judgment application

The Swyncombe Settlement Trustees applied for Strike Out and Summary Judgment on two points of law:

- (a) The Unanimity Principle – trustees must, unless the trust deed states to the contrary, act unanimously.
- (b) The Non-Fettering Rule – trustees cannot fetter their discretion for a future date.

The Unanimity Principle

“The office of co-trustees of a private trust is a joint one. Where the administration of the trust is vested in co-trustees, they all form as it were but one collective trustee and therefore must execute the duties of the office in their joint capacity. Sometimes one of several trustees is spoken of as the acting trustee, but no such distinction is known to the law: all who accept the office are expected to act. If anyone refuses or is unfit to act, it is not competent for the others to proceed without him...”¹

The Swyncombe Settlement Trustees submitted that on Stephen’s pleaded case, the representations which form the basis of his proprietary estoppel claim were only explicitly made by one trustee. They may have been acquiesced to by others, but in any event at least one trustee had not been involved in the representations.

Non-Fettering Rule

“When the power is fiduciary, the donee must exercise his judgment according to the circumstances as they exist at the time: he cannot anticipate the arrival of the proper time by affecting to release it or not to exercise it or by pledging himself beforehand as to the mode in which the power shall be exercised in future is ineffective. Any form of undertaking as to the way in which the power will be exercised in future is ineffective...”²

The Swyncombe Settlement Trustees submitted that it is settled law that the trustees at the relevant time could not have

¹ Lewin on Trusts (18th ed.) 29-61

² Lewin of Trusts (18th ed.) 29-204

entered into a valid contract with Stephen as to how they would exercise their discretion in the future – any such contract would be unenforceable. Therefore, Stephen should not be in a better position by relying on a proprietary estoppel claim than he would have been had he attempted to rely on a contract.

Accordingly, the Non-Fettering Rule prevents an estoppel from arising on two basis:

- (c) It prevents the representation being made from being binding; and
- (d) It makes it unreasonable for a person receiving the representation to rely on it.

Judgment

The Unanimity Principle

The unanimity principle does apply in the context of a proprietary estoppel claim.

It is not sufficient merely for a Claimant asserting estoppel to believe that the representor has authority. Neither is it enough that the representor has the appearance of authority with nothing to suggest otherwise to the Claimant.

Therefore, it is only possible for an agent to bind another if he acts with authority.

"[t]here is nothing unconscionable in a person denying what another has come to believe and acted upon to his detriment if that person has not, either himself or through his agents, allowed the other to reach that belief."

The Non-Fettering Rule

The non-fettering rule does not act as a complete defence to a proprietary estoppel claim in the context of the strike out/summary judgment application.

If the non-fettering rule were to act as a complete defence it would prevent a claim for promissory estoppel ever being brought against trustees even in circumstances where the Claimant was unaware that he was dealing with trustees.

It cannot be fair that a person who in all good faith had conducted his affairs in a way that caused him detriment on the basis of a representation to be left without any remedy purely based on the status of the person giving the representation, i.e. that they are a trustee rather than the outright legal and beneficial owner.

This is a developing area of jurisprudence and the argument was left open to be resurrected at trial.

Conclusion

However, in the above case the judge stopped short of allowing the non-fettering principle to be deployed as a complete defence by trustees.

The circumstances in which the non-fettering rule is relevant to a proprietary estoppel claim remain to be decided.

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