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CHAMBERS

WHAT CAN WE LEARN FROM WILLS V SOWRAY?

Stephanie Jarron

Permission to appeal refused in Wills v Sowray [2020] EWHC 939 (Ch)

1. In this case, heard in the BPC in Leeds in March 2020, I acted for the successful Claimants.
2. The Claimants, Matthew and James Wills, were brothers and long-term friends of Tony Sowray, who owned and lived at Gillmoor Farm, near Harrogate. Matthew had helped Tony on the farm from the age of about 8 and by the time he was in his late teens, Tony had started to say to him things like “it’ll all be yours one day”. Tony himself had given up dairy-farming in the late 1990s and had largely handed over the day-to-day running of the place to Matthew. In the words of one of our witnesses “Tony was the laziest person on earth”. Matthew had taken on full responsibility for maintaining the land, fencing, draining, cutting hay and so on.
3. James had lived on a 1 acre plot at the farm since about 2007. In 2012 James agreed with Tony that he could have this plot of land in return for James giving Tony his Jeep. In reliance on the promise, James bought a log cabin and installed it on the plot, he planted trees, erected fences, and generally made it his own. Tony was living right next door in the farmhouse and spent a lot of time with both James and Matthew.

4. Tony had a daughter, Claire, from whom he was estranged in her early life. But when she went to university, in about 2005, they started to see each other again and built up a relationship over the last few years of his life.
5. Tony died intestate in February 2017. Claire, as his only daughter, inherited the whole farm including James' plot and the farmhouse in which Tony had lived.
6. Matthew and James issued a claim in proprietary estoppel, Matthew claiming the land and farm buildings, with the exception of the farmhouse, and James claiming the plot of land.
7. HH Judge Raeside QC found all the elements of proprietary estoppel made out. There were clear representations to Matthew, he had acted to his detriment in reliance on those promises and it was unjust for Tony to go back on his promises. Similarly, in relation to James, there was a "firm and clear understanding" that James would own the plot and James relied on that understanding to his detriment so that an equity arose in his favour.

Points of interest:

8. Can an agreement which is not in writing for the transfer of land and therefore falls foul of s.2 Law of Property (Miscellaneous Provisions) Act 1989 form the basis of a claim in proprietary estoppel?

The Judge held that it could, notwithstanding *obiter dicta* to the contrary in *Cobbe v Yeomans Row* [2008] 1 WLR 1752.

9. The only documentary evidence in this case was on Claire's side. As is often the case in proprietary estoppel claims, Matthew and James had nothing whatsoever in writing to substantiate their case. Matthew said in evidence "no single email, no text message, no phone transcript, no – I spoke to Tony almost every day, why would I need to do otherwise?" The only documentary evidence from Matthew was a text message he sent to Claire after Tony's death which said "you don't have to thank me. I would have done anything for your dad"

The judge held that the lack of documentary evidence had “no consequence” in this particular case.

10. Matthew and James had consulted a solicitor shortly after Tony died. The solicitor had written to Claire asserting that Matthew and James were tenants, shortly after which Matthew and James moved their instructions to Irwin Mitchell. Matthew and James disclosed the solicitor’s file and Claire, rather unusually, called their former solicitor to give evidence against them.

Unfortunately for Claire, this did not help her. The judge found that the solicitor decided “unilaterally” to call the agreement that Matthew and James each had with Tony a “tenancy” without any instructions from his clients. There was evidence on the solicitor’s file of a Google search that he had carried out on the subject of “agricultural tenancies” which he had not dealt with since the early 1980s.

Conclusions

11. So the short answer to my question – what can we learn from *Wills v Sowray*? – is that sometimes, just sometimes, your client’s honesty and straightforwardness can carry the day!

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