Alert

November 2008

Property @ction

Gentlemen prefer contracts in writing

The House of Lords has recently handed down an important decision which should reduce uncertainty in commercial negotiations, particularly in the field of property development. *Cobbe v Yeoman's Row Management Ltd [2008] UKHL 55* concerned the legal concept of proprietary estoppel and it is the first case on this subject to reach the Lords since *Ramsden v Dyson* in 1866.

Proprietary estoppel

An "estoppel" bars one party from asserting some fact or facts that stand in the way of a right claimed by another party. If the right claimed is a proprietary one – usually a right to or over land - the estoppel becomes a "proprietary" estoppel.

A proprietary estoppel comes into existence if A encourages B to believe that B enjoys rights in land and B relies on A's assurance to B's detriment.

Many cases relating to proprietary estoppel arise in a domestic context, where a partner or family member is led to believe that he or she has rights in a property that they do not legally own. Their subsequent reliance upon this expectation has often been held to justify a ruling that the legal owner cannot then renege but must fulfil the claimant's hopes. In *Ramsden v Dyson*, proprietary estoppel was used to protect the rights of tenants on a large landed estate.

In relatively recent years, the courts have used the doctrine of proprietary estoppel as a means of conferring interests in land upon parties whose claims would otherwise fail, because they have not satisfied the strict formal requirements imposed by statute, particularly the requirement under section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (Section 2). This provides that a contract for the sale or other disposition of an interest in land must be made in writing.

Cobbe v Yeoman's Row Management Ltd was such a case. The House of Lords had to consider whether proprietary estoppel could be argued in a commercial context, to assist a developer who had failed to conclude a written agreement to purchase a property.

The facts

Mrs Lisle-Mainwaring and her husband were directors and shareholders of Yeoman's Row Management Ltd, which owned the freehold of a block of flats and the long leasehold interest of what were originally three flats but which were combined to form one large flat.

In 2002, Mrs Lisle-Mainwaring (described by Lord Scott in the House of Lords as giving "every impression of knowing her way around the negotiating table"), on behalf of Yeoman's Row, reached a gentlemen's agreement in principle with Mr Cobbe ("an experienced property developer").

Mr Cobbe was, at his own expense, to apply for planning permission to demolish the block of flats and to replace it with a terrace of six houses. On the grant of planning permission, the flats were then to be sold by Yeoman's Row to Mr Cobbe for £12m. He would carry out the development, sell the houses and pay to Yeoman's Row 50% of the amount, if any, by which the gross proceeds of sale exceeded £24m.

Although both parties expected the details of this arrangement to be agreed without difficulty and to be incorporated in a formal legal contract at a later date, this was never drawn up and they proceeded purely on the basis of their oral agreement.

Mr Cobbe obtained planning permission in April 2004 but by this time, Mrs Lisle-Mainwaring had become dissatisfied with the terms agreed. She did not inform Mr Cobbe of her dissatisfaction initially, but led him to believe that the deal would be honoured. As soon as planning permission was granted however, she told him that she would not proceed on the basis previously agreed and sought to renegotiate terms.

The proceedings

Mr Cobbe originally brought proceedings for specific performance of the agreement that he had reached with Mrs Lisle-Mainwaring and damages for its breach. However, such a claim would have fallen foul of Section 2 because the agreement was not in writing. He therefore substituted claims for declarations first, that Yeoman's Row held the block of flats on constructive trust for itself and Mr Cobbe and secondly, that Yeoman's Row was estopped from denying that Mr Cobbe had an interest in the property, with, in each case, a claim for consequential relief. He also added a claim for an inquiry into the time he had spent and the expenditure that he had incurred in obtaining planning permission and, following that inquiry, "….such restitution as the court considers just".

Mr Cobbe won in the High Court on the ground that the conditions for proprietary estoppel were satisfied and the judge awarded him one half of the increase in value of the property brought about by the grant of planning permission. The judge also held that Mr Cobbe would have been entitled to relief on his constructive trust claim but that relief on the basis of proprietary estoppel was the more satisfactory way of providing a remedy on the facts of the case. The judge did not find it necessary to deal with the claim in restitution.

The parties eventually agreed that Mr Cobbe's entitlement under the court's award amounted to £2m. Mrs Lisle-Mainwaring paid him that sum but also appealed to the Court of Appeal. It upheld the trial judge's findings in relation to Mr Cobbe's entitlement to succeed on the basis of proprietary estoppel.

Undeterred, Mrs Lisle-Mainwaring appealed again to the House of Lords, this time successfully. The House of Lords decided unanimously that the essential elements of a proprietary estoppel were not present and that the course of events did not give rise to a constructive trust in favour of Mr Cobbe. Lord Scott, who delivered the leading judgment cited, with approval, some words of Deane J in *Muschinski v Dodds*;

> "…proprietary rights fall to be governed by principles of law and not by some mix of judicial discretion, subjective views about which party 'ought to win' … and the 'formless void' of individual moral opinion…"

A proprietary estoppel would have come into existence if Mrs Lisle-Mainwaring had encouraged Mr Cobbe to believe that he enjoyed rights in land and he had relied on that assurance to his detriment. The court decided that she had not given him that encouragement. In its view, both parties were fully aware that Mr Cobbe had no rights in land, that they merely had a "gentlemen's agreement" and that they were bound in honour and not legally.

Mrs Lisle-Mainwaring did encourage Mr Cobbe to believe that once he had obtained planning consent, she would honour the bargain previously agreed. Lord Scott had no hesitation is saying several times that she had behaved unconscionably, but he concluded nevertheless that the elements necessary to give rise to a proprietary estoppel were not present.

The House of Lords also considered whether Mr Cobbe had a claim for unjust enrichment. Whilst Lord Scott found that he had, the extent of Mrs Lisle-Mainwaring's unjust enrichment only amounted to what it had cost Mr Cobbe to obtain the planning permission, and not the increased value of the property, which was always latent and was simply unlocked by the obtaining of that permission.

Ultimately, the House of Lords found that Mr Cobbe was entitled to a quantum meruit payment for his services in obtaining the planning permission.

Conclusions

The decisions in the lower courts introduced uncertainty into commercial negotiations, particularly in relation to interests in land. A measure of certainty has been restored. The moral – if not the morality - of the decision is that if you want to be in a position where you can enforce legally a bargain that you have struck, it is always best to draw up a proper written agreement.

For more information please contact:

Manchester

Helen Hoath: Senior Associate
Tel: +44 (0)161 830 5068
Email: helen.hoath@hammonds.com

Birmingham

Caroline Wort: Senior Associate
Tel: +44 (0)121 222 3405
Email: caroline.wort@hammonds.com

Leeds

Patrick Walker: Director for Advocacy
Tel: +44 (0)113 284 7566
Email: patrick.walker@hammonds.com

London

Will Lawrence: Partner
Tel: +44 (0)207 655 1551
Email: william.lawrence@hammonds.com