

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved



No. CH-2018-000256

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND & WALES
CHANCERY APPEALS (ChD)
ON APPEAL FROM THE NORTHAMPTON COUNTY COURT
[2019] EWHC 1418 (Ch)

Rolls Building
Fetter Lane, London, EC4A 1NL

Thursday, 9 May 2019

Before:

MRS JUSTICE FALK

B E T W E E N :

SAHOTA

Appellant

- and -

(1) MICHAEL PRIOR

(2) LESLEY PRIOR

Respondents

MR J. JESSOP (instructed by Hamstead Law Practice) appeared on behalf of the Appellant.

THE RESPONDENTS appeared in Person.

J U D G M E N T

MRS JUSTICE FALK:

- 1 This is an appeal against a decision of Her Honour Judge Hampton in the Northampton County Court, dismissing a claim for possession by the claimant, Ms Sahota, of the defendants' home pursuant to s.21 of the Housing Act 1988. The claim was brought on the basis that the assured shorthold tenancy under which the defendants, Mr and Mrs Prior, occupied the property, which ran for a period of five years from 9 December 2010, had expired. The claim failed on the grounds of proprietary estoppel; the judge concluding that Ms Sahota was estopped from asserting any right to possession, save for non-payment of rent, during Mr and Mrs Prior's lifetime or for so long as they wished to reside in the property.
- 2 The facts are relatively simple. Mr and Mrs Prior, who are now in their sixties, purchased the property on their marriage over 35 years ago and have lived there ever since. They got into financial difficulties and their home was in the course of being repossessed. They saw an advertisement in *The Sun* newspaper by a business called Red 2 Black, which seemed to provide a solution to their problems in the form of a sale and rent back transaction under which they would be able to carry on living in their home. The directors of Red 2 Black were a Mr Chadda and his wife, a Ms Dhillan. Mr Chadda later received a very heavy fine from the Financial Conduct Authority in respect of this type of transaction, with the FCA noting that people undertaking them were often vulnerable individuals needing to raise money to pay mortgage arrears and to avoid imminent repossession, and finding that there were widespread failings by Mr Chadda, including telling the owners concerned that he would be buying their homes, when, in fact, the purchasers were other people, and falsely claiming that the price paid would be based upon an independent valuation.
- 3 Ms Dhillan visited Mr and Mrs Prior at home, as a result of which a TR1 Form of Transfer of the property was executed by them in blank with the transferee not identified. They were not aware of this at the time, but the actual transferee in the subsequently completed transfer was Ms Sahota, the claimant in the action and the appellant in this appeal. Mr and Mrs Prior also signed a five-year tenancy agreement, which is the document on which Ms Sahota now relies.
- 4 The couple were later told that their property had been valued at £90,000, although the transfer document as completed shows a price of £130,000. That is the same figure as the mortgage valuation obtained on behalf of Ms Sahota. In fact, Mr and Mrs Prior effectively only received £52,000, which was the amount of the debts met from the sale, and they never received any balance. They at no stage met Ms Sahota, whom they were led to believe was a director of Red 2 Black.
- 5 At paras.23 to 31 of her judgment, the judge made some important findings of fact. These included that Mr and Mrs Prior were in difficult circumstances and were naïve. The judge found that they were assured that under the sale and rent back arrangement their debts would be paid, they would be permitted to live in the property for the rest of their lives, provided they paid the rent, and that repairs would be undertaken by Red 2 Black. The judge also found that Mr and Mrs Prior never had any meaningful contact with the solicitors apparently engaged on their behalf in the transaction, and that they signed the transfer document in blank. In addition, and importantly, the judge found that they queried why the tenancy document was for only five years, but they were assured that they did not need to worry about that: it was simply to ensure that they paid the rent. Finally, the judge found that, once the fraudulent activities of Mr Chadda came to light, they were contacted by a Ms K

Sahota, the claimant's sister-in-law, who repeated the assurances previously given by Ms Dhillan, namely, that they could remain in the property for the rest of their lives and that repairs would be taken care of. I understand that that contact occurred in 2012.

- 6 In fact, when Mr and Mrs Prior tried to contact Ms Sahota about repairs, they got nowhere and, because they believed that they could remain in the property for the rest of their lives, they carried out repairs and improvements, incurring expense which the judge estimated at just under £7,400 (see para.48). At para.47, the judge also records a finding that there was a sale at an undervalue, by reference to the mortgage valuation of £130,000.
- 7 The judge found that proprietary estoppel was established, such that Ms Sahota was estopped from seeking to assert any right to possession, save for non-payment of rent, during Mr and Mrs Prior's lifetimes or for so long as they wished to reside in the property. Ms Sahota challenges this on two grounds. The first is that the judge was wrong to hold that the statements allegedly made by Red 2 Black were binding on her, both because it acted as the agent of Mr and Mrs Prior and could not also act as her agent, and because she had no knowledge of those statements. In these circumstances, it was said that it was not possible for Ms Sahota to "ratify" the actions of Red 2 Black, as the judge had held. The second ground of appeal is that the judge was wrong to hold that s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 did not apply to prevent a claim to estoppel.
- 8 I should first explain very briefly the ingredients of a proprietary estoppel so far as relevant to this case. There must be a promise or assurance of a proprietary interest, reliance on that assurance and detriment in consequence of the reliance (see Lord Walker's judgment in *Thorner v. Major and others* [2009] 1 WLR 776 at 29). The assurance needs to be sufficiently clear and unequivocal and reliance must be reasonable. As also explained in *Thorner*, proprietary estoppel must relate to identified land. In this case there is no doubt that the land is identified and that an assurance was made on which Mr and Mrs Prior relied to their detriment. They transferred the property at an undervalue and later also incurred expenditure on works at their home.

First ground of appeal: whether the statements relied on bound Ms Sahota

- 9 Turning to the first ground of appeal, Ms Sahota's position is that Red 2 Black effectively acted as Mr and Mrs Prior's estate agent and not as her agent. Ms Sahota says that Mr and Mrs Prior contacted Red 2 Black to assist them. However, the judge found that this was not the case and instead found that Red 2 Black and Ms Dhillan acted as the agents of Ms Sahota (see, in particular, paras.43 and 44 of the judgment). In my view, the judge was entitled to reach that conclusion on the facts. The facts found by the judge included the following: the existence of an extended family relationship between Ms Sahota and the individuals involved in Red 2 Black; the fact that Ms Dhillan, a director of Red 2 Black, approached Ms Sahota about the possible investment; the fact that the property was put in Ms Sahota's sole name at Ms Dhillan's suggestion; the fact that Ms Dhillan made all the arrangements on Ms Sahota's behalf, including arranging her mortgage funds; and the fact that Mr Chadda, the controller of Red 2 Black, initially received part of the rent.
- 10 In addition, the assertion that Red 2 Black should not be regarded as Ms Sahota's agent is contradicted by the documentary evidence. Whilst the tenancy particulars set out in the tenancy documents state that the landlord is S. Sahota, the "Landlord address" is stated as "Red 2 Black Properties Ltd", followed by PO box details. This is a document on which Ms Sahota relies, because the expiry of the tenancy granted by it is the basis of her possession claim. In addition, the manuscript signatures on the document appear to include a signature on behalf of Red 2 Black as the landlord's agent, rather than by Ms Sahota herself. When I

drew this to the attention of counsel for Ms Sahota, he agreed that the signature did, indeed, appear to be one that reads Red 2 Black. Ms Sahota is, therefore, now seeking to take a position that is directly contradicted by a contemporaneous document on which she relies, and one which the judge found was signed by Mr and Mrs Prior before the transfer of the property completed.

- 11 As already mentioned, the arrangements regarding rent initially included receipt of part of the rent by Mr Chadda, the controller of Red 2 Black. It is very hard to see how that is consistent with the assertion that Red 2 Black's role was as agent for Mr and Mrs Prior. An agent for a seller would expect to be remunerated by the seller and not remunerated on an ongoing basis by the purchaser, which is what the diversion of rent to Mr Chadda really amounts to.
- 12 As regards the state of Ms Sahota's knowledge, it is correct that the judge did not explicitly find that she was aware of the assurances made by Ms Dhillan. Instead the judge, effectively, left the point open (see para 33 where she suggests that Ms Sahota "might" also have been the victim of fraud and "may well" have suffered loss). However, she did find that the assurances were subsequently repeated by Ms K Sahota. This individual was not only the person to whom rent has been paid throughout, but she also helped the claimant, Ms Sahota, fund the deposit and, in addition, had some involvement in arranging the mortgage. The judge recorded that the claimant accepted in evidence that her sister-in-law was, effectively, acting as her agent, managing the transaction for her and that the arrangement could be described as a joint venture between them (see paras 15, 18 and 29). Ms Sahota was otherwise very vague about the arrangements between her and her sister-in-law (see para.18). In my view, it is inconceivable that Ms K Sahota would have volunteered assurances which she did not understand to have been given at the time of the original transaction, and on which Mr and Mrs Prior had clearly relied. Ms K Sahota was obviously also aware that the initial rent arrangements provided for Mr Chadda to receive part of the rent. We have a situation, therefore, where Ms Sahota's admitted joint venturer must have been aware of the assurances at the time of the transaction even if Ms Sahota was not aware of them herself.
- 13 Counsel for Ms Sahota, Mr Jessop, submitted that the judge was wrong to conclude that Ms Sahota had "ratified" the assurances because there was no finding that she was aware of them. He relied on **Bowstead & Reynolds on Agency** (21st Edition) at para.2-071 which, in summary, states that, in order for a principal to ratify an act done without authority, it is necessary that the principal should have knowledge of it.
- 14 The paragraphs of HHJ Hampton's judgment to which counsel referred were paras.38 and 44. Paragraph 38 refers to the ability to imply or infer an agency agreement where one party is acting on another's behalf, and to the possibility of ratification by conduct after the event. At para.44, the judge found that, even if there was not an express agency agreement between Ms Sahota and Ms Dhillan or Red 2 Black, by going ahead with Ms Dhillan making all the arrangements, Ms Sahota was "adopting and ratifying the agency arrangement".
- 15 It is important to note that the thing that the judge was saying was ratified was the *sale and rent back transaction*. She was not saying, in terms, that the *assurances* were ratified, but that is not surprising because she made no finding that Ms Sahota was aware of them.
- 16 I made the point to Mr Jessop that, to the extent that agency concepts were relevant, it might also be relevant to consider the concept of apparent authority. That is the principle under which a person who, by words or conduct, represents or permits to be represented that

another person has authority to act on his behalf, is bound by the acts of that person with respect to anyone dealing with the agent on the faith of the representation (see **Bowstead** at para.8-010).

- 17 In this case, Ms Sahota allowed or permitted Ms Dhillan, and subsequently Ms K Sahota, to arrange everything on her behalf. She at no stage made contact with the Priors. She relies on a tenancy agreement which explicitly refers to and is signed on behalf of Red 2 Black as her agent. By her conduct, she has allowed it to appear that Red 2 Black, in the form of Ms Dhillan, had full authority to act on her behalf.
- 18 In circumstances where Ms Sahota is specifically relying on the terms of transactions apparently entered into by Red 2 Black on her behalf, without visiting the property, without contacting Mr and Mrs Prior or, it seems, without otherwise making any enquiries herself, it cannot be right, as a matter of equity, that she is entitled to disassociate herself from an assurance made on her behalf of which her joint venturer, at least, must have been aware at the time that the arrangements were entered into. No case was cited to me that requires me to decide otherwise. Although I am not persuaded that the principles of ratification are necessarily relevant, it is clear from the paragraphs in **Bowstead** that follow the one to which I was referred to by counsel (that is, paras.2-072 and 2-073) that, where a transaction is ratified by a principal who does not trouble himself to find out the detailed terms, he is bound by those terms and also that, where a matter is left entirely to an agent and the transaction entered into is ratified, the whole transaction may be ratified despite irregularities of which the principal had no knowledge. These points seem to me to be relevant, at least by analogy, and must, in principle, extend to representations which induced a transaction to be entered into. I, therefore, do not consider that Ms Sahota is entitled in equity to avoid being bound by the assurances given by Ms Dhillan, which induced Mr and Mrs Prior to transfer their home, by the absence of a finding that she knew about those assurances.

Second ground of appeal: s.2 Law of Property (Misc. Provisions) Act 1989

- 19 I also do not agree that the judge erred in law in finding that s.2 of the Law of Property (Miscellaneous Provisions) Act 1989 did not apply to prevent Mr and Mrs Prior's claim. Mr Jessop submitted that the judge wrongly relied on *Thorner v. Major*, and wrongly preferred it to the authority of a slightly earlier House of Lords case, *Cobbe v. Yeoman's Row Management Ltd* [2008] 1 WLR 1752. Mr Jessop said that this was incorrect because in *Thorner* there was no sale of land and so s.2 was irrelevant. In contrast, *Cobbe* did relate to a sale of land and a claim to proprietary estoppel failed.
- 20 In this case there was both a sale of land and a grant of tenancy, to each of which s.2 is potentially relevant. Section 2(1) provides as follows:
- “A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed ...”
- 21 Mr Jessop relied on an obiter dictum of Lord Scott at para.29 of *Cobbe*:
- “...Section 2 of the 1989 Act declares to be void any agreement for the acquisition of an interest in land that does not comply with the requisite formalities prescribed by the section. Subsection (5) expressly makes an exception for resulting, implied or

constructive trusts. These may validly come into existence without compliance with the prescribed formalities. Proprietary estoppel does not have the benefit of this exception. The question arises, therefore, whether a complete agreement for the acquisition of an interest in land that does not comply with the section 2 prescribed formalities, but would be specifically enforceable if it did, can become enforceable via the route of proprietary estoppel. It is not necessary in the present case to answer this question... My present view, however, is that proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void. The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of section 2 is, in my opinion, unacceptable. The assertion is no more than the statute provides. Equity can surely not contradict the statute..."

- 22 In addition, counsel referred to *Yaxley v. Gotts* [2000] Ch.162, an earlier case that also considered s.2, where statements were made by the Court of Appeal at pp.175 and 181 about the role of s.2 in providing certainty in the formation of contracts and Parliament's intention that this outweighs the disappointment of those who make informal bargains in ignorance of it, and to the effect that proprietary estoppel may not render a transaction valid which the legislature has enacted should be void on grounds of public policy.
- 23 Counsel also referred to *Westdeutsche Landesbank v. Islington London Borough Council* [1994] 4 All E.R 890 at p.929 where, in relation to a claim for unjust enrichment, Hobhouse J referred to the requirement that the court should not grant a remedy which amounts to the direct or indirect enforcement of a contract which the law requires to be treated as ineffective. In similar vein, he referred to *Actionstrength Limited v. International Glass Engineering IN.GLEN SpA* [2003] UKHL 17, where it was concluded that an oral guarantee could not be relied on where to do so would allow equity, essentially, to repeal the Statute of Frauds.
- 24 Mr Jessop submitted that, as in *Cobbe*, the parties here were dealing at arm's length. The terms relied on should have been included in the contract entered into, and allowing proprietary estoppel to override the statute was inimical to the sound policy reasons behind s.2.
- 25 In my view, this case is far from the mischief discussed by the House of Lords in *Cobbe* and the other cases relied on by Mr Jessop. In the *Cobbe* case, Mr Cobbe, who was said to be an experienced property developer, had reached an oral agreement, in principle, to acquire property and had incurred expense in connection with obtaining planning permission in respect of it. The terms of the agreement were incomplete and the court found that Mr Cobbe knew that the oral agreement was not binding. Lord Scott noted that, if the proprietary claim succeeded, then Mr Cobbe would achieve more or less what he sought from the oral agreement (see para.4). In the circumstances, there was neither estoppel nor a proprietary claim, and proprietary estoppel required both of those things (paras.14 and 16). Lord Scott explained at para.25 that proprietary estoppel cannot usually arise in so-called "subject to contract" cases, because the purchaser's expectation of acquiring an interest is subject to a contingency entirely under the control of the other party.
- 26 The dictum relied on at para.29 is to the effect that proprietary estoppel cannot be used to make an agreement enforceable which the statute has declared to be void. That is, of course, right, but, in my view, that is not what Mr and Mrs Prior are seeking to do. They are not trying to enforce a contract for the sale or other disposition of land. They are not seeking to bind Ms Sahota to transfer a property interest to them pursuant to a contract. What they are

trying to assert is that Ms Sahota is prevented from recovering possession of their home from them during their lifetime, because of an assurance on which they relied when they transferred the property and subsequently did work on it. The claim that Ms Sahota is not entitled to recover possession also does not involve an assertion that the assurance relied on was part of the term of any other contract, either for a sale to Red 2 Black or the grant of a tenancy to Mr and Mrs Prior. Indeed, in the case of the tenancy, Mr and Mrs Prior were well aware that it was for only a five-year period, but they were told not to worry about that and that they would be able to remain thereafter, provided they continued to pay rent. What Mr and Mrs Prior relied on was an assurance or representation which induced them to sign the TR1 Form pursuant to which the property was transferred, and later induced them to do work on their property.

- 27 Counsel is really seeking to rely on the fact that s.2 renders a contract void unless all the terms are incorporated in a written document. He is effectively saying that there was a contract, or contracts, for sale and/or lease and, because the assurance relied on is not reflected in the written terms, it must be void.
- 28 One response to this is the one I have already made, namely, that Mr and Mrs Prior are not relying on inclusion of the assurance in any such contract. A second response is that s.2 does not, in any event, have the effect for which counsel contends. What it does is to render void any contract for the disposition of land if it is not in writing or does not incorporate all the terms expressly agreed (subject to irrelevant exceptions). What is made void is the agreement *for the sale or other disposition of land*. What Lord Scott was getting at in para.29 of *Cobbe* was the point that proprietary estoppel cannot be used to get around this, but it does not mean that no other legal consequences can attach to the circumstances surrounding any such transaction, where recognition of those consequences does not amount to an effective enforcement of an agreement that would be void under s.2, namely, an agreement for sale or other disposition. The interpretation contended for by Counsel is not what the section requires as a matter of statutory construction, and would go well beyond reflecting the sound policy reasons behind s.2.
- 29 Thirdly, s.2 applies to contracts. In this case, there were two written documents: the first was an actual transfer of the land (the TR1). The second was a tenancy agreement, but it operated as the grant of a tenancy rather than agreement to grant one in the future. The first document at least (the TR1) was not a contract for the sale or disposition of an interest in land. Both documents were actual dispositions. There is no indication that there was a prior contract in either case; indeed, in the case of the sale it does not appear that there was an effective agreement about the price, which is a key ingredient for a contract to be valid. In any event, any contract for sale or agreement to grant a lease in future would in all likelihood have been merged into the transfer or tenancy document (see **Chitty on Contracts** (33rd Edition) Vol.1 at 25-003). Mr and Mrs Prior were certainly not thinking in terms of contracts but instead about their ability to continue to occupy their home. They were led to believe that they would be able to do so. I note that the grounds of appeal refer explicitly to s.2 of the 1989 Act and not to other provisions relating to the creation or transfer of interests in land, such as s.53 of the Law of Property Act 1925, which, in any event, does not include a provision requiring all the terms agreed between the parties to be incorporated.
- 30 Although Counsel relied on the absence of incorporation of the assurance into the written tenancy agreement, in my view, the assurance was principally relied on to sign the TR1 in the first place. Mr and Mrs Prior were induced to transfer their home on the basis of the assurance.

- 31 *Thorner* was a case where a nephew of a farmer succeeded in claiming a beneficial interest in the farm against the farmer's estate, relying on proprietary estoppel in the form of assurances made while the farmer was alive. Lord Neuberger explained *Cobbe*, at para.92 of *Thorner*, on the basis that "Mr Cobbe's claim failed because he was effectively seeking to invoke proprietary estoppel to give effect to a contract which the parties had intentionally and consciously not entered into, and because he was simply seeking a remedy for the unconscionable behaviour". At paras.94 to 96, he distinguished *Cobbe* on two grounds. First, that there was total uncertainty as to the nature or terms of any interest Mr Cobbe would obtain and, secondly, on the basis of the very different facts, involving a highly-experienced businessman in circumstances where the parties had consciously chosen not to enter into a contract. At para.97, he noted that s.2 may have presented Mr Cobbe with a problem in that case, but that it had no impact on the type of claim being considered in *Thorner*, which he said "is a straightforward estoppel claim without any contractual connection".
- 32 Lord Neuberger also referred at para.100 to a distinction drawn by Lord Walker in *Cobbe* at para.68 between what he referred to as the "commercial context" and the "domestic or family context". It is worth setting this paragraph from *Cobbe* out:
- "...In the commercial context, the claimant is typically a business person with access to legal advice and what he or she is expecting to get is a *contract*. In the domestic or family context, the typical claimant is not a business person and is not receiving legal advice. What he or she wants and expects to get is an *interest* in immovable property, often for long-term occupation as a home. The focus is not on intangible legal rights but on the tangible property which he or she expects to get. The typical domestic claimant does not stop to reflect (until disappointed expectations lead to litigation) whether some further legal transaction (such as a grant by deed, or the making of a will or codicil) is necessary to complete the promised title."
- 33 Although Counsel attempted to present this as a commercial contract, it is really a domestic case. Mr and Mrs Prior were not business people expecting to get a contract, but wanting to retain long-term occupation of their home. Lord Neuberger's description of the claim in *Thorner* as not having any contractual connection was a description of the facts of that case and not intended to be a statement that s.2 has the effect that proprietary estoppel can never play a role in circumstances where the relevant facts include a disposition of land.
- 34 As the judge did, I have considered the commentary in **Snell's Equity** (33rd Edition) on the relevance of s.2 in proprietary estoppel, in particular. s.12-045. I will not set that out or read that out now, but I will say that I consider that that passage is supportive of the conclusion I have reached. Although not referred to me in argument, I have also considered further not only *Yaxley v. Gotts*, but also two other Court of Appeal cases, *McGuane v. Welch* [2008] EWCA Civ. 785 (both it and *Yaxley* predate both *Cobbe* and *Thorner*) and *Herbert v. Doyle* [2010] EWCA Civ. 1095 (which postdates both *Cobbe* and *Thorner*). All of those cases consider s.2. I have not found anything in those decisions that causes me to doubt my conclusions.
- 35 Accordingly, I dismiss the appeal. Mr and Mrs Prior can remain in their home on the basis specified in HHJ Hampton's order.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by Opus 2 International Limited
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

This transcript has been approved by the Judge