

**Addressing the ‘Lively Controversy’ around Proprietary Estoppel: *Guest v Guest* [2022] UKSC
27**

Abstract

The long-awaited Supreme Court ruling in *Guest v Guest* has provided a welcomed judgment on a core principle in equity and trusts law, proprietary estoppel. The leading judgment not only provides guidance on the purpose of relief for proprietary estoppel, but also provides much needed clarity on a persistently debated issue in case law, namely whether an ‘expectation-based’ or ‘reliance-based’ approach to calculating relief for proprietary estoppel should be adopted, with the judgment providing an insightful step-by-step guide for the exercise of judicial discretion in such cases to ensure appropriate and justified relief is awarded.

Case Note

*Guest v Guest*¹ is the much-awaited Supreme Court judgment clarifying the workings of one of equity’s core principles, proprietary estoppel. Proprietary estoppel is an equitable remedy which was developed to mitigate the rigours of the law by preventing one from exercising their legal rights to unconscionably deny something that was promised which another acts upon to their detriment.

Unconscionability consequently ‘permeates all elements’² of the doctrine of proprietary estoppel which consists of: an assurance of sufficient clarity; reliance on that assurance; and detriment suffered as a consequence of such reasonable reliance on the assurance made. Where all elements of proprietary estoppel are satisfied, the courts must exercise discretion to determine what relief to award on a case-by-case basis.

However, it is this flexibility in determining how equity must be satisfied that continues to present issues today, namely whether such discretion should be exercised to satisfy the promisee’s expectation or compensate for their detriment, a key question of law the Supreme Court sought to address in *Guest*; the judgment seeks to clarify the calculation of relief for proprietary estoppel. It is

¹ [2022] UKSC 27

² *Gillett v Holt* [2001] Ch 210, 225

accordingly no surprise that Lord Briggs himself notes the judgment's evident significance for proprietary estoppel case law:

'The principles applicable to proprietary estoppel have never been before the Supreme Court, and only twice in recent times before the House of Lords, in *Cobbe v Yeoman's Row* [...] and *Thorne v Major* [...]. Neither yields rich pickings for a reasoned understanding of the principles governing the identification of appropriate relief to satisfy the equity once established.'³

Facts

Guest concerned a proprietary estoppel claim by Andrew over the family farm, known as 'Tump Farm', which Andrew and his brother were set to inherit equally in accordance with wills made by their parents in 1981. Following assurances of inheritance, Andrew worked on Tump farm for over 30 years once leaving school and, given his interest in farming, undertook agricultural apprenticeships and courses on farm management. He worked on the farm for around 60 hours a week for a low wage, and eventually moved into a cottage on the farm in 1989. Andrew used his wages to pay board and lodging to his parents.

In 2012, both brothers entered into a partnership over the farm and business, but this partnership was quickly dissolved following a relationship breakdown, leading Andrew's parents to produce new wills which specifically excluded him from inheriting the farm and business, and instead left him with only the right to occupy the cottage he was residing in. However, the fallout between Andrew and his parents continued, and he was not only told to leave the cottage in 2017, but his father also completely excluded Andrew from his will, and denied any promise of inheritance.

Although Andrew was able to find alternative employment upon leaving the cottage, he brought a claim for the injustice caused via proprietary estoppel. Andrew sought to receive either an entitlement to occupy the cottage and a sole beneficial interest in the farm and business, or a 'clean-

³ (n 1) [14]

break' which would enable him to set up his own farming business elsewhere. Andrew's parents brought a counter claim, denying that such representations were made.

The court were accordingly tasked with determining whether representations of Andrew's right to inherit the farm were made and relied upon to his detriment, and thus the relief to be awarded if his claim was successful.

Chancery Division

The chancery division provided a detailed, step-by-step judgment outlining the elements needed to satisfy a finding of proprietary estoppel and the relief to be awarded to Andrew in light of this.

Firstly, Judge Russen QC clarified that the first element of proprietary estoppel is that an assurance or representation of sufficient clarity is made, an assurance determined objectively and considered within the context of the relationship and dealings between the parties.⁴ Where the expectation changes over time, or there is uncertainty over the amount or interest to be given, the judgment confirmed that, so long as a longstanding promise or assurance can be identified, this will not render the assurance unclear.⁵ Accordingly, despite the amount that Andrew expected to inherit changing over time, this was not enough to render the repeated assurances over the years, such as 'when you take over the farm' and 'one day the farm will be yours', as uncertain.

Secondly, Judge Russen explained the stages of reliance and detriment. As noted, a causal connection between the assurance and detriment suffered must be identified, with detriment being determined from the moment the defendant seeks to go back on their promise.⁶ Here, Judge Russen not only acknowledged Andrew's undertaking of courses on farm management, actions which demonstrated his forward-thinking about the farming business, but the financial detriment he suffered

⁴ *Guest v Guest* [2019] EWHC 869 [128], [137], [138]; *Thorner v Major* [2009] UKHL 18 followed

⁵ *ibid* [139], [143]

⁶ *ibid* [128],[129]; *Davies v Davies* [2016] EWCA Civ 463 confirmed

given his dedication to working on the farm from 16 in return for a low wage, years of service that would not have been undertaken had it not been for the assurances of inheritance made to him.⁷

Upon finding the three elements needed for proprietary estoppel, the court clarified the significance of also finding unconscionability; looking at the case ‘in the round’, one must ask whether it is unconscionable for the promise not to be kept, in whole or in part.⁸ Here, in determining unconscionability, Judge Russen explained that the relationship breakdown and alternative employment Andrew was able to obtain following his departure from the farm were irrelevant to such considerations, and did not diminish the injustice Andrew had suffered. The parent’s repudiation of the assurances was consequently deemed unconscionable, allowing Judge Russen to consider the final element of proprietary estoppel, the relief to be awarded.

Judge Russen acknowledged his broad judicial discretion to determine a remedy which avoids an unconscionable result, whilst ensuring the minimum equity to do justice is granted. In calculating relief, he explained that effect should be given to the claimant’s expectation, unless it is ‘disproportionate’ to do so; the courts cannot examine the detriment suffered in isolation from the expectation raised, meaning the remedy must be calculated by looking at the case ‘in the round’, and should focus on giving the ‘minimum’, and not necessarily the ‘maximum’, necessary to do justice.⁹

In light of the breakdown of relations between Andrew and his family, Judge Russen awarded a ‘clean-break’; as it was unrealistic to think Andrew would continue farming alongside his family, a clean-break lump sum payment equivalent to 50% of the market or actual value of the farming business, alongside 40% of market or actual value of the farm buildings, was given, with the consequence that the family had to sell the farm, or a substantial part of it, to raise this sum.

⁷ *ibid* [268]

⁸ *ibid* [275],[276]

⁹ *ibid* [282]

The first instance hearing of *Guest* accordingly found proprietary estoppel, and detailed how relief should be calculated in such cases.

Court of Appeal

Following the remedy awarded, Andrew's parents appealed on three grounds: that it was wrong to calculate the remedy based on Andrew's expectation; that the relief went beyond what was necessary to avoid an unconscionable result; and that alternative relief should instead be calculated using the 'objective bystander test' to avoid an unconscionable result, namely considering what an objective bystander believes the owner's assurances intended.

In dismissing the appeal on all grounds, the court of appeal upheld Judge Russen's award of a clean-break, and affirmed that the unfortunate consequence in having to sell the farm did not invalidate this remedy. In clarifying the correct approach to calculating relief for proprietary estoppel, the court explained the role of unconscionability and the factors judges should balance when exercising their discretion.

As explained, to avoid an unconscionable result, a consideration of all the circumstances of the case is needed; the calculation of relief is not determined by solely looking at the issue through the owner's eyes.¹⁰ The court were accordingly clear that introducing an 'objective bystander' test into such calculations injects 'an unnecessary layer of complication into an established approach',¹¹ and is not supported by authority; the key consideration is instead whether it is unconscionable for the promise to be repudiated, and requires a proportionate balance between the expectation raised and the detriment suffered to identify the minimum needed to do justice. They accordingly upheld the clean-break relief awarded, noting that Judge Russen 'did not fall into any error here', nor did he 'exceed the bounds of his discretion'.¹² They clarified that awarding the alternative remedies sought by Andrew's parents would result in a 'lesser' remedy which would not satisfy equity as these did not

¹⁰ *Guest v Guest* [2020] EWCA Civ 387

¹¹ *ibid* [77]

¹² *ibid* [86],[88]

derive from a consideration of the assurances made, and what detriment Andrew suffered as a result of relying on them.¹³

Thus, the court affirmed that, although the need for sale was a sad consequence for the family, it was part of what was necessary to avoid an unconscionable result. They accordingly contributed to the ‘discretion debate’ by affirming that discretion’s purpose is to award a remedy that is appropriate in the circumstances of the case to do justice and here, given the relationship breakdown and the inability of the courts to compel such parties to work or live together, a clean-break was the most suitable remedy.

The Significance of the Supreme Court’s Judgment

On appeal, the Supreme Court sought to determine whether the expectation raised by an assurance is the appropriate starting point for determining the remedy to apply, and whether the clean-break remedy which would result in the sale of the farm exceeded what was necessary to grant relief in the circumstances, a judgment of compelling significance for its guidance on the proper approach to granting relief in proprietary estoppel cases moving forwards.

Ground One: The Role of ‘Expectations’

The first fundamental question for the Supreme Court was clarifying whether the correct approach to apply when awarding a remedy for proprietary estoppel is an ‘expectation-based’ or ‘reliance-based’ approach. To do so, the Supreme Court first had to determine the purpose of such relief, and affirmed that:

‘The true purpose [...] is dealing with the unconscionability constituted by the promisor repudiating his promise [...] In this context, justice means remedying the unconscionability identified in the promisor’s repudiation of his promise.’¹⁴

¹³ *ibid* [79], [81]

¹⁴ (n 1) [13]

Its underlying purpose is thus to restrain, or ‘estop’, the reneging of a promise given the unconscionability that arises when doing so. Although the relevance of detriment here was also highlighted, with Lord Briggs noting that ‘without reliant detriment, there is simply no equity at all’¹⁵ as this is what ‘makes it unconscionable’ for the promisor to renege on their promise,¹⁶ a reliance-based approach to calculating relief was explicitly rejected by the majority.¹⁷ Lord Briggs thus concluded that:

‘While reliant detriment was a necessary condition for the equity to arise, the court’s focus on holding the promisor to his promise was not aimed at “protecting” the promisee from the detriment, still less compensating for it. It was aimed at preventing or remedying the unconscionability of the actual or threatened conduct of the promisor, with the effect [...] that it tended to satisfy the expectations of the promisee.’¹⁸

The recognised approach for remedying unconscionability was accordingly affirmed as either enforcing the promise, and thus upholding the expectation this raised, or substituting the enforcement for a payment based upon the value that one expected to receive; the unconscionable harm the courts are seeking to remedy is not the detriment suffered, but the deprivation of an expectation one has dedicated themselves too.¹⁹

In upholding this expectation-based approach to calculating relief, Lord Briggs provides a two-fold justification centred on the meaning of ‘just’ remedies in this context, and the incompatibility of a reliance-based approach with this.

¹⁵ *ibid* [10]

¹⁶ *ibid*

¹⁷ Lords Leggatt and Stephens, although agreeing to allow the appeal, did so on the basis of the ‘reliance-based’ approach instead. See, for example, [187]-[191], [193]-[196], [255] and [261].

¹⁸ *ibid* [61],[62]

¹⁹ *ibid* [11], [61], [62]

Firstly, Lord Briggs provides significant precedence by highlighting the true meaning of the famous, yet ‘misunderstood’, dictum of Scarman LJ that an award for proprietary estoppel should secure ‘the minimum equity to do justice’²⁰. He explains that this surrounds a consideration of how best to fulfil, but not exceed, the plaintiff’s expectation, and does not mean one must instead compensate for the detriment where the expectation cannot be met.²¹ More importantly, it does not involve judges choosing between the two to find the ‘cheaper’ remedy; ‘minimum’ does not equate to ‘cheapest’ in this context,²² an evident misconception raised over time.

Accordingly, the dictum provides what Lord Briggs deems as ‘clear authority’ for expectation-based relief designed primarily to satisfy the plaintiff’s expectation, and not to compensate for their detriment,²³ thereby providing significant clarification on how to meet the ‘minimum’ to do justice in such cases; meeting the expectation should be the starting point when awarding relief, relief which should not be guided by the ‘cheaper’ remedy, but instead what is sufficient to address the unconscionability of repudiating the promise made.

Secondly, and in light of the true meaning of ‘minimum equity’, Lord Briggs provides a persuasive criticism of the limitations of the detriment-based approach to relief in remedying unconscionability by explaining why it is wrong both in principle and practice:

‘it fails to recognise that [...] it is the repudiation of the promised expectation which constitutes the unconscionable wrong. It mistakenly treats the detriment rather than the loss of expectation as the relevant harm. [And, it] is wrong in its result because it would, if correct, entirely replace what is meant to be a flexible conscience-based discretion aimed at producing justice with the mechanical task of monetarising the detriment and the expectation and then awarding whichever produces the lower figure, on the misconceived basis that this is the

²⁰ *ibid* [7]; *Crabb v Arun DC* [1976] Ch 179, 198

²¹ *ibid* [25]

²² *ibid* [25],[30]

²³ *ibid* [28], [30]

“minimum equity needed to do justice”. This would set [...] the purpose of the estoppel, [...] to hold the promisor to his promise, completely upon its head.’²⁴

Accordingly, as this approach would instead prioritise remedies which secure ‘restitution’ for the detriment suffered over remedying the unconscionability caused when expectations are not met,²⁵ Lord Briggs correctly dismisses its use when calculating relief; it undermines the purpose of proprietary estoppel altogether.

Thus, despite Andrew’s parents claiming that Judge Russen was wrong not to adopt a detriment-based remedy, this ground was rejected, with Lord Briggs succinctly concluding that **‘this court should firmly reject the theory that the aim of the remedy for proprietary estoppel is detriment-based forms any part of the law of England.’²⁶** The case accordingly provides much needed clarity on the precedence to be given to the expectation-based approach to relief moving forwards.

Ground Two: Calculating Relief

Consequently, to determine whether the clean-break remedy awarded was one that secured the minimum equity to do justice, or exceeded what was necessary to grant relief in the circumstances, Lord Briggs provides a useful step-by-step guide on the expectation-based approach to follow when calculating relief for proprietary estoppel, principles of evident significance for future cases.

Firstly, Lord Briggs notes that judges must determine whether the promisor’s repudiation of the promise, in light of the promisee’s detrimental reliance on it, is unconscionable in the circumstances.²⁷

²⁴ *ibid* [53]

²⁵ *ibid* [70]

²⁶ *ibid* [71]

²⁷ *ibid*

Secondly, if unconscionability is found, judges must then consider the remedy to apply. When calculating a remedy, judges should begin with an assumption that the unconscionability can be remedied by enforcing the promise. However, the court should also consider alternatives, such as a monetary equivalent of the property, if such remedies can also negate the unconscionability that arises, particularly where full enforcement may cause injustice to others.²⁸

They should also consider ‘limiting’ the remedy if it will be out of proportion to the promisee’s detriment.²⁹ However, in clarifying the use of this limitation, Lord Briggs explains that ‘this does not mean that the court will be seeking precisely to compensate for the detriment as its primary task, but simply to put right a disproportionality which is so large as to stand in the way of a full specific enforcement doing justice between the parties.’³⁰ Determining such proportionality thus serves no more than a cross-check for potential injustice.³¹

In cases concerning the repudiation of a promise to be enforced in the future, including upon the death of the promisor, useful guidance is provided on the accelerated benefit to be given and the ‘discount’ for such early receipt that should be applied;³² if the promisee receives a benefit they expected earlier than anticipated due to a clean-break being needed, the benefit should be discounted accordingly.

Lastly, once a provisional remedy has been chosen, the court should then consider whether this remedy secures justice ‘in the round’, namely by considering ‘whether, if the promisor was to confer that proposed remedy upon the promisee, he would be acting unconscionably. “Minimum

²⁸ *ibid* [75]

²⁹ *ibid* [76], [77]

³⁰ *ibid*

³¹ *ibid* [72]

³² *ibid* [78]

equity to do justice” means, in that context, a remedy which will be sufficient to enable that unconscionability question to be answered in the negative.’³³

When applied to the facts, Lord Briggs highlights a significant limitation to Judge Russen’s exercise of discretion when calculating relief. As noted, the ‘least satisfactory part’ of his analysis was the failure to consider both why the clean-break justified an ‘immediate interest’ in Tump farm being awarded, with the effect that the farm had to be sold, to meet Andrew’s future expectation of inheritance upon his parents’ death, and the discount to apply to the accelerated benefit awarded.³⁴ As the assurances were never to grant Andrew ownership of the farm in the parents’ lifetime, the remedy created an injustice and raised the subsequent question of whether Judge Russen exceeded the ambit of his discretion, to which Lord Briggs confirmed he had:

‘there has never been any doubt that there is no equity to give a claimant more than his promised expectation [...] There may be discretion to accelerate, if necessary for example to achieve a clean-break, but only if there is built in an appropriate discount to reflect early receipt.’³⁵

Lord Briggs accordingly called for the discretion to be exercised afresh and instead gave the parents a choice between two remedies: either offering Andrew a reversionary interest under a trust of the farm, with the parents having a life interest in it in the meantime, or, if a more complete break is desired, a monetary equivalent to be given to Andrew in advance of his parents’ death only if sufficient discount for early receipt is applied to this sum. Both remedies thus acknowledge the continuing life interest the parents are entitled to in the farm, and thereby overcome the injustice the initial remedy secured by better aligning with what was promised:

‘Either remedy [...] would draw the sting of unconscionability from the outright repudiation of their promises to him. Since the aim of the remedy is to prevent or remove

³³ *ibid* [80]

³⁴ *ibid* [90], [96]

³⁵ *ibid* [98]

unconscionability, then where there are two different ways of doing so the persons against whom the equity is asserted should in principle be the ones to make that choice.’³⁶

Thus, although flexibility remains when utilising Lord Brigg’s steps to calculating relief, this is arguably justified to ensure a just result based on Andrew’s expectations is secured, and not exceeded, thereby demonstrating the decision’s importance; it demonstrates how to appropriately calculate and exercise judicial discretion in this context.

Conclusion

Therefore, given the persistent debates raised within case law on the appropriate means to determine relief for proprietary estoppel, the significance of the Supreme Court’s leading judgment is apparent;³⁷ it provides decisive treatment by the highest court on the calculation of relief for proprietary estoppel using an expectation-based approach.

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³⁶ *ibid* [104]

³⁷ Although the Lords were divided on the remedy to award, the majority judgment provides binding precedence of use and significance in proprietary estoppel case law moving forwards