‘CINDERELLA’S’ FAIRYTALE ENDING CURBED

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The Court of Appeal has given a further judgment in *Davies v Davies* [2016] EWCA Civ 463, which some in the media have dubbed the ‘cowshed Cinderella’ case. The £1.3 million award that had been thought necessary to satisfy the claimant’s estoppel equity at first instance was reduced to £500,000.

When Eirian Davies was 17 in 1985, it became clear that she was the only one of her parents’ daughters who was interested in taking over their farm. Her parents indicated that she would ultimately have the farming business, but it was understood that she would work on it in return. The relationship between Eirian and her parents, however, was extremely complex, encompassing *inter alia* arguments, differing representations following those arguments, acquisitions of farmland, periods when she was not working on the farm, periods when she was being paid for her work there, periods of living on the farm rent-free, periods of external employment (later given up), a period where she mistakenly believed that she was a partner in the farming business (later incorporated), her being shown a draft will in 2009 in which she was left the land, buildings and a share in the company (albeit that she knew it was later varied), and concessions that she had no expectations relating to the farm for a period before that beginning in 2001.

After the parties’ relationship completely broke down in 2012 and Eirian issued proceedings, the judge nevertheless held ([2013] EWHC 2623 (Ch)) that her parents had made relevant representations on which Eirian reasonably relied. Detriment was established on the basis that she had not been fully recompensed for her work on the farm and had given up more lucrative and attractive employment elsewhere. In a 2014 judgment ([2014] EWCA Civ 568, [2014] Fam Law 1252), the Court of Appeal upheld the judge’s findings on these matters, and asserted that it was unconscionable for the parents to deny her an estoppel equity over the farm.

Subsequently ([2015] EWHC 015 (Ch)), the judge sought to satisfy the equity in the context of a farming enterprise worth some £3.15 million. He found that, despite its varying nature, ‘[t]he essence of the expectation was that in reality Eirian was the only person who could fulfil her parents’ wishes of keeping the business in the family after their days’ (para [38]). He held that, whatever it might be, the expectation was ‘an appropriate starting point’ (para [35]). It was recognised, however, that this was not a case where ‘the expected benefit and the expected detriment were equivalent or not disproportionate’, in light of the differing representations, the fact that at one time she had no expectations regarding the farm, and the fact that the condition of her working on the farm was not always fulfilled (para [33]). It could not be said that ‘Eirian positioned her whole life on the basis of her parents’ assurances’ (para [34]). The judge concluded that the proportionate remedy was a £1.3 million lump sum, representing approximately a third of the farm and farming business’ value, which he saw as ‘a fair reflection of the expectation and detriment and other factors’ (para [56)]).

In allowing the parents’ appeal ([2016] EWCA Civ 463), the Court of Appeal acknowledged the scholarly debate over the relative weight that should be attached to expectation and detriment when satisfying the equity. While declining to resolve it, Lewison LJ opined that ‘[i]f…the detriment can be fairly quantified and a claimant receives full compensation for that detriment, that compensation ought, in principle, to remove the foundation of the claim’ (para [39]). He endorsed counsel’s suggestion that there might be ‘a sliding scale by which the clearer the expectation, the greater the detriment and the longer the passage of time during which the expectation was reasonably held, the

greater would be the weight that should be given to the expectation' (para [41]; cf Lord Walker, 'Which Side "Ought to Win"? – Discretion and Certainty in Property Law' [2008] *Singapore Journal of Legal Studies* 229, 239).

In the case at hand, Lewison LJ held that the judge had taken an excessively broad-brush approach and neglected to analyse the facts with sufficient rigour or sufficiently to explain his conclusions. In particular, the judge 'did not explain which expectation out of the many he found he regarded as the starting point' (para [42]), which Lewison LJ clearly considered fatal where there was 'a series of different (and sometimes mutually incompatible) expectations, some of which were repudiated by Eirian herself, others of which were superseded by later expectations' (para [48]).

The Court of Appeal also criticised the judge for failing to analyse properly an offer of £350,000 made by the parents, which comprised an accommodation element, a partnership element, a company element, and an element representing the extent to which Eirian had been underpaid for her work. Much of it went towards satisfying expectation, and (for example) the mere fact that there was no suggestion that the business might be carried on elsewhere did not inevitably mean that any promise related to the unencumbered freehold of the land. The only possible explanations for his bridging the gap between the £350,000 and the £1.3 million were, firstly, that he attributed a value around £1 million to the non-financial aspects of the detrimental reliance (i.e. her sacrificing the opportunity to work shorter hours in a less stressful environment), and/or, secondly, that he ascribed a very large value to the disappointment of Eirian's expectation of inheriting the land (as distinct from the business and the herd).

On the first point, Lewison LJ noted that (in light of the current state of her relationship with her parents) Eirian 'was now free to do all that which the judge said that she had given up', and that her employment situation was retrievable after detriment lasting five years at most (para [65]). On the second, she had lost any expectation of inheritance until the draft will was shown to her in 2009, and the new expectation was short-lived. Taking into account these factors, delayed payment and changes in monetary value (but also countervailingly early payment in relation to future expectations), the Court of Appeal increased the offer by £150,000 to produce £500,000.

Davies is an admirably principled judgment from the Court of Appeal on what was hardly the strongest estoppel claim. It is arguably a counter-example of trends of remedial generosity and appellate deference identified by John Mee, 'Proprietary Estoppel and Inheritance: Enough is Enough?' [2013] *Conveyancer & Property Lawyer* 280, although Eirian Davies by no means went away empty-handed.

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