

THE PRINCIPLES OF LAND LAW

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Howe v Gossop [2021] EWHC 637 (Ch)

Howe v Gossop is a decision of Snowden J in the High Court concerning proprietary estoppel and section 2 Law of Property (Miscellaneous Provisions) Act 1989.

Facts

Mr and Mrs Howe owned White Hart Farm, and a large amount of land and roads surrounding the property. They sold a former agricultural building to Mrs Gossop for conversion into a residential dwelling. In the transfer, Mr and Mrs Howe granted to Mrs Gossop a right of way over a road to the South. She agreed that she would resurface that road. The Howes agreed they would pay her £7,000 once

the resurfacing works were complete. These works were complete, and Mrs Gossop was owed £7000. The parties had a meeting. Mr Howe suggested to Mr Gossop that the Howes would transfer additional land to the Gossops instead of paying the £7000. One part of this – the Green Land as referred to the judgment, was clearly identified. The other part, the Grey Land, was not. At the end of this meeting there was a ‘handshake deal’. However, nothing was written down at this meeting. After the meeting, the Gossops spent money and time in development of the land. The parties then fell out, and there was a dispute surrounding both the Green and Grey lands.

Decision

The Court was required to assess whether an estoppel had arisen in favour of the Gossops. The judge at first instance found that it had.

The Court, in considering the case before it, began by emphasising the relatively settled nature of the law of proprietary estoppel as regards the need for an assurance, detriment and reliance. The difficulty for the Court lay in the interaction, now much discussed in the case law and academic commentary, between estoppel and section 2. Snowden J closely examined the leading decisions in *Cobbe v Yeoman’s Row* and *Thorner v Major*. Snowden J concluded as follows:

This case relates to the discussion of proprietary estoppel in chapter 8.

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“Section 2 is aimed at problems in the formation of contracts for sale of land, whereas the purpose of an estoppel is to remedy unconscionability in the assertion of strict legal rights. Accordingly, there is considerable doubt that Section 2 is intended to affect the operation of proprietary estoppel at all, but even if it did, Section 2 could only operate as a bar to the grant of equitable relief if and to the extent that such relief had the effect of enforcing, or otherwise giving effect to, the terms of a contract for the sale or other disposition of an interest in land that the statute renders invalid and unenforceable” [48].

In essence, the Court highlights the point discussed in *Principles* that estoppel does *not* give rise to an enforceable contract, and as such, section 2 should not affect the establishment of an estoppel. In this case, since the Gossops were not attempting to enforce any contract, but rather the defend themselves against a possession action, there was no reason why an estoppel could not be used. As a result, Snowden J upheld the first instance judge’s decision to grant an irrevocable licence to use the land for as long as the Gossops occupied.

The Court also discusses *Herbert v Doyle* and the ‘exceptional’ criterion discussed in that case to explain when estoppel can arise through pre-contractual or contractual negotiations. Snowden J emphasises that there is no such requirement. However, it is important to note that,



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Proprietary estoppel and section 2

“if a claimant is seeking relief that amounts to enforcement of a non-compliant contract, he needs to point to something else as the basis for an estoppel based on unconscionability” [66]. Simple performance of the terms of the alleged contract will not be enough. Instead, there needs to be something more that generates some unconscionability in revoking any oral assurances.

Overall, this is a useful and clear judgment of the interaction between section 2 and estoppel. It very clearly states that the generation of estoppel does not, simply because there is an oral agreement, amount to the enforcement of a contract. Such would breach section 2. Instead, the generation of an estoppel is an entirely different outcome from the creation of a contract, and as such, section 2 is not relevant.