Case No: A3/02/2510

Neutral Citation Number: [2003] EWCA Civ 1176
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)

Royal Courts of Justice
Strand,
London, WC2A 2LL

Thursday 31st July 2003

Before :

LORD JUSTICE PILL

LORD JUSTICE LAWS

and

LADY JUSTICE ARDEN

- -

Between :

Ottey	Appellant
- v -	
Grundy	Respondent

- -

(Transcript of the Handed Down Judgment of
Smith Bernal Wordwave Limited, 190 Fleet Street
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Official Shorthand Writers to the Court)

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MR J MCDONNELL & MISS B RICH (instructed by Lee & Pembertons) for the Applicant
MR K GARNETT QC (instructed by Collyer Bristow) for the Respondent

- -

Judgment

Lady Justice Arden :

1. Before this court are an appeal by Mark Grundy, the executor of the late Mr Timothy Andreae and a cross-appeal by the claimant in this action, Dorothy Ottey.

2. Mr Andreae was born on 16 January 1945. He died on 5 July 2000. The appellant is his executor. He left his estate on discretionary trusts. Miss Ottey was not named as a beneficiary in the will or as a discretionary object. She made two claims against Mr Andreae's estate. First, she claimed that there was a proprietary estoppel claim on the basis of certain promises made to her by Mr Andreae. These relate to an apartment in Jamaica and a life interest in a house boat in Chelsea. Secondly, Miss Ottey made a claim under the Inheritance (Provision for Family and Dependants) Act 1975. At trial she succeeded in part on her first claim but failed on her second claim. The executor appeals against the judge's ruling on the proprietary estoppel claim. Miss Ottey cross-appeals on the basis that the judge should have allowed her claim on the basis of proprietary estoppel in full, rather than in part.

3. Mr Andreae was married from 17 February 1970 until about 1995. The marriage failed in about 1979. There are two children of the marriage, Laura, who was born in 1971 and Michael, who was born in 1973.

4. Mr Andreae did not have employment. He was fortunate enough to have a private income. However, he was unfortunate in that he had a severe alcohol problem.

5. Miss Ottey is an actress. She came originally from Jamaica and Mr Andreae had strong links with that country. The relationship between Miss Ottey and Mr Andreae started in 1996. Mr Andreae treated Miss Ottey as his wife. Miss Ottey was financially dependant on

Mr Andreae. She also looked after him and made extraordinary efforts to try to assist him with his alcohol problem. The relationship ended in about October 1999. According to the judge, Mr Andreae alleged that Miss Ottey had attacked him with kitchen utensils and he had had to call the police. She had then left with all her belongings. Miss Ottey's version of events is that she had had to have major surgery and that she was told to rest and that she decided as a result to go back to her mother's flat. Her case was that the relationship was not at an end, but the judge did not accept this part of her evidence.

6. The action came before His Honour Judge Langan QC sitting as a Deputy Judge of the High Court of Justice, Chancery Division. The evidence lasted approximately two days. The judge heard final submissions on Thursday, 14 November 2002 and gave judgment on Friday, 15 November 2002.

The judgment below

7. The judge set out his findings in some detail. He charted the relationship between Mr Andreae and Miss Ottey. They first met in late 1995. They quickly became close friends. They lived together from sometime between February and June 1996 until October 1999. They lived variously on Mr Andreae's houseboat in Chelsea, his house in Hampshire and his flat in Jamaica. According to the judge, Miss Ottey "took charge of domestic arrangements, shopped and cooked, supervised the staff and so on." She drove Mr Andreae around because he could not drive because of his alcohol problems. The couple had expensive holidays and lived a luxurious life style.

8. The judge found that it was plain from correspondence in the court bundle that Mr Andreae "was very much in love with [Miss Ottey] and regarded her as the rock to which he wanted

to cling for the rest of his life". He found that Miss Ottey reciprocated these feelings. The judge referred to evidence given by old friends of Mr Andreae who regarding his getting together with Miss Ottey as the best thing that had happened to him for a very long time.

9. Mr Andreae's alcohol problems led to periods of hospitalisation in the Lister Hospital, Chelsea and the Wellington Hospital, St Johns Wood in the early part of 1996, again in the Wellington in May 1997 following a heart attack and subsequently in the Priory Hospital, Southgate. Miss Ottey was largely successful in keeping Mr Andreae's drinking under some form of control for about two years. The judge expressed the view that "this was anything but easy".

10. After Mr Andreae's discharge from the Priory Hospital, Southgate, he was well for a few months but began to drink again at the end of 1998.

11. In May 1999, Miss Ottey underwent major surgery. The recovery period was protracted. Mr Andreae's drinking became worse. The couple parted in October 1999 and as I have said, Miss Ottey moved to her late mother's council flat in the Archway area of London. She saw Mr Andreae on about three occasions between this date and her death. Mr Andreae formed two further relationships, a very short one with a woman called Pamela and a longer one beginning in early 2000 and running up to his death with Elizabeth Spitzy.

12. On 15 February 2000, Mr Andreae sent a letter by fax to his lawyer in Jamaica, Mr Malcolm McDonald, telling Mr McDonald that he and Miss Ottey had parted. The letter was written in terms which the judge described as "deplorably offensive" as regards Miss Ottey.

13. It was agreed for the purposes of this case that Mr Andreae's estate was worth some £1.5 million.

14. The judge heard oral evidence from Miss Ottey, Mr Timothy Jeal, Mr Lancelot Richie, Mrs Rustie Lee, Mr Mark Andreae, Mrs Irene Andreae (Mr Andreae's former wife) and from Mr Andreae's sister, Mrs Sophie Blain.

15. The judge accepted Miss Ottey as an honest witness and he accepted her account of her life with Mr Andreae as generally reliable. He had three reservations, the third of which is potentially relevant on this appeal and it is the matter that I have already mentioned, namely the nature of her separation from Mr Andreae in October 1999.

16. The judge attached significance to the evidence of Mr Timothy Jeal and Mrs Rustie Lee. He found that Mrs Andreae and Mrs Blain were most impressive witnesses, speaking without rancour about Miss Ottey, and in the case of Mrs Blain, with considerable admiration for her.

17. As to the law, the judge considered the cases of *Gillett v Holt* [2001] Ch. 210 and *Jennings v Rice* [2002] WTLR 367, both decisions of this court. I will examine these authorities below.

18. The promise on which Miss Ottey relies was contained in a letter dated 16 February 1998 to Mr McDonald:-

> "Dear Malcolm
>
> This is a Letter of Intent with respect to all those assets not specifically covered by my UK Will, which has been drawn up by Messrs Lea [sic] & Pemberton, 45 Pont Street, London SW1 – Partner: Mark Grundy.
>
> This letter will, as to purpose, content and application, be administered along the lines, history and customs of British Law, but will at no time be

constrained by taxes, imports or other claims by the British Treasury, its Commissioners of Tax, or anybody or anything representing them, or by any other body.

This letter is to empower you, as holder of my Power of Attorney, to expedite everything listed below as fast as possible, without fees or commission to yourself.

(1) To maintain the existence of Lapbroig [sic] Ltd, Caynan Islands.

(2) To retain within Lapbroig [sic] the title/ownership of the houseboat 'Eagle', Chelsea Yacht & Boat Co, 106 Cheyne Walk, London SW10. In the event of my demise, my companion, Miss Dorothy Ottey of the same above address, shall enjoy a life interest in the boat, and in the event of her death, the boat be transferred to both, or either – at their joint discretion – of my children, Laura and Michael.

(3) In the event of my death, to transfer outright to my companion, Miss Dorothy Ottey, the Apartment noted above, namely: Apt 204, Barcelona Complex, Seaview Avenue, Kingston, Jamaica – with Deeds of Title.

(4) To transfer into Lapbroig [sic] Ltd those two lots of land, No.5 and the property, Palm Beach, Runaway Bay, Folio, currently in the name of myself and 1st Kingston Resources Ltd, Jamaica.

(5) To amend, delete, add such matters as may arise under my signature.

cc: TT Andreae

Mark Grundy, Messrs Lea [sic] & Pemberton

Miss Dorothy Ottey"

19. I will call this letter "the letter of intent". The judge found that Mr Andreae did not sign the letter but provided Miss Ottey with a copy. He intended to send a copy to Mr Grundy also, but whether he did so is uncertain.

20. Miss Ottey gave evidence that she and Mr Andreae had discussed the provision which would, or might be made for her on Mr Andreae's death. Her evidence was that the matter first arose in the summer of 1997 when Mr Andreae had been discharged from hospital and the couple were together at their Hampshire house. They had been watching a film on television in which the principal character was a girl who had lived with a man for many

years and when he died she had to rebuild her life completely. Miss Ottey explained that she and Mr Andreae discussed this at length:

> "Mr Andreae did not want this to happen to me and he assured me that he had made provision for me if anything should happen to [him]. He specifically told me that he had enough money so that I would be cared for for the rest of my life. He also told me, 'You have the apartment in Kingston and I will make arrangements for [Mr McDonald] to transfer the apartment over to you'."

21. Miss Ottey also explained that Mr Andreae wanted to make Miss Ottey a director of the company which owned his houseboat in Chelsea. He assured her that Mr Grundy and Mr McDonald knew all the facts.

22. The judge found that there were probably occasional discussions of the same matter over the next few months culminating in the letter of 16 February 1998.

23. Mr Grundy did not challenge any of this evidence. However, Mr Grundy confirmed that in 1997 Mr Andreae was intending to make provision for Miss Ottey by will. In the circumstances, the judge held that the requirement of a promise or assurance for the purposes of proprietary estoppel was established "with unusual ease". The judge held that the promise was specific as to its subject matter and was properly to be regarded as having been made in the summer of 1997. The letter to Mr McDonald was no more than confirmatory.

24. The judge then turned to consider detriment. The pleaded detriment was of two kinds, first, that Miss Ottey continued to look after Mr Andreae and second, that she gave up her career in acting and modelling. The judge regarded Miss Ottey's evidence as to her career as exaggerated. He was sceptical about her evidence of past success and as to the future, he was equally sceptical. He concluded that Miss Ottey:-

> "was not a person whose career would have been a marked success. Rather she, like so many soi-disant actors, have spent most of the year resting and have been forced to look outside the thespian field. She might have obtained some modelling, but I am bound to say the passage of the years must for any model result in diminishing work."

25. The judge referred to *Gillett v Holt* [2001] Ch.210 and noted a submission by counsel for Mr Grundy that even assuming that reliance was established so as to link the promise and the detriment, the evidence in support of the detriment was insufficient to bring the doctrine of proprietary estoppel into play. She submitted that living with an alcoholic and caring for him was part of the common incidents of a quasi-matrimonial relationship. Further, the alleged detriment should be set against the benefits derived by Miss Ottey from her relationship with Mr Andreae. The judge rejected these submissions. He held that the element of detriment in both its pleaded aspects had been established without difficulty:

> "Miss Ottey was a carer as much as a girl friend. Coping with this situation cannot be characterised as part and parcel of an ordinary relationship, nor can it fairly be regarded as counter-balanced by the good times which intervened between the bad."

26. As to her career, this had been interrupted at Mr Andreae's request. Her career prospects could only have been made worse by her prolonged absence from her career.

27. Accordingly, the judge found that the element of detriment was established.

28. As to reliance, the judge considered that question presented the real difficulty with regard to the proprietary estoppel claim. The judge referred to *Wayling v Jones* [1993] 69 P&CR 170. Once a claimant had shown that promises were made and that the claimant's conduct was such that inducement to act in reliance on those promises could be inferred, the burden of proof shifted to the defendant to disprove reliance. The judge held that he was bound to ask what Miss Ottey would have done if the promises had been revoked. He held that in

answering the question he had to bear in mind that the evidential burden lay on the defendant.

29. On the other hand, by the time the promise was made, Miss Ottey and Mr Andreae had been living together as man and wife for at least a year and Miss Ottey knew that Mr Andreae had a serious alcohol problem.

30. Miss Ottey saw no need for marriage. The judge accepted Mrs Blain's evidence that Miss Ottey stayed with Mr Andreae because they were deeply in love. Mrs Blain gave evidence that it was close to nonsensical to suggest that the relationship continued because the promises were made.

31. The judge held that reliance was to be tested not by enquiring what a claimant did when a promise was made but rather what a claimant would have done had the promisor subsequently reneged on his assurance. The judge held that Miss Ottey would have reacted strongly if Mr Andreae had withdrawn his promise. Miss Ottey's evidence was that if the promise had been revoked she would have re-started her career. Although her evidence did not go that far, he held that her response

> "could well … have taken the more extreme form of leaving. In any event, the burden of proving non-reliance is on the defence. In my judgment, the defence has not discharged that burden."

32. The judge then turned to consider how the court was to satisfy the equity. He referred to *Jennings v Rice*. The court had to make such award as would do justice between the parties. The judge noted that on the evidence the capital value of the promises was approximately £240,000/£250,000, and this was the award that Miss Ottey sought. Mr Grundy sought an award of around £20,000. The judge refused to accept either position. The approach of

Miss Ottey was of a contractual rather than an equitable kind. On the other hand, Mr Grundy's case ignored the element of expectation. The judge held that the following matters should be taken into account:-

i) The expectation was worth some £250,000.

ii) The expectation had been created on the assumption that Miss Ottey and Mr Andreae would be partners for the rest of their joint lives. In fact they were partners for no more than two years and a few months after the promise was made.

iii) The detriment suffered by Miss Ottey was that of caring for Mr Andreae for the period of their co-habitation and a career interruption. The period from the making of the promise and until Mr Andreae's death was approximately three years.

iv) The termination of the relationship was not Miss Ottey's fault.

v) The effect of the termination of the relationship was that Miss Ottey passed from an extremely comfortable life to one which is "economically on the margin".

vi) The expectation and the detriment were, in the judge's judgment, out of proportion.

33. The judge concluded that, giving proper weight to each of the factors mentioned, Mr Grundy should pay to Miss Ottey out of the estate the sum of £50,000 and that Mr Grundy should use his best endeavours to secure a transfer of the Jamaica apartment into the name of Miss Ottey and in default to pay her the further sum of £50,000.

34. The judge then turned to consider Miss Ottey's claim under the Inheritance (Provision for Family and Dependants) Act 1975. For the purpose of jurisdiction, the judge had to be satisfied that Miss Ottey was a person "who immediately before the death of the deceased was being maintained either wholly or partly by the deceased". The judge found that this was not the case on the facts and there is no appeal on that point. The termination of the relationship with Mr Andreae was acrimonious and other women entered Mr Andreae's life. The judge did not accept that Mr Andreae had provided a carer for her after their relationship had terminated. The judge also was not satisfied that he had made cash payments to her after that date. The only contribution to Miss Ottey's life which Mr Andreae made in the months preceding his death was that she had full use of his car. The judge held that was insufficient to qualify as a substantial contribution to her needs for the purposes of giving him jurisdiction under the 1975 Act. The judge added that if Miss Ottey had failed on proprietary estoppel but qualified under the 1975 Act, taking account of the factors mentioned in section 3(1) and (4) of the Act and of the guidance in the case law, he would have made an award of £40,000.

Submissions

35. In his submissions, Mr John McDonnell QC, for the appellant, Mr Grundy, focuses on the fact that the judge was satisfied that there was a promise or assurance but at a later point in his judgment, when considering what was the appropriate relief, held that the "expectation must, however, have been created on the basis of an assumption that [Miss Ottey and Mr Andreae] would be partners for the rest of their joint lives." (Judgment, paragraph 44).

36. Mr McDonnell submits that there is a distinction between the situation where a matrimonial or quasi-matrimonial relationship gives rise to proprietary estoppel and the situation where

some other relationship, such as that of parent and child or employer and employee gives rise to proprietary estoppel. He also fastens on the fact this was not a promise of an immediate gift but a testamentary promise. In real life there is always the possibility that a relationship of a matrimonial or quasi-matrimonial nature will break down. If it breaks down because of the actions of the person who gave the assurance it may be appropriate for the court to enforce the equity nonetheless. But, on Mr McDonnell's submission, the position is different if the person to whom the assurance is given decides that he or she can no longer live with the party who has given the assurance and terminates the relationship accordingly. In that situation, Mr McDonnell submits, there is no equity to enforce or at least the equity is very unlikely to survive that termination. It makes no difference if the person who made a testamentary promise of this kind survives for six months or twenty years. In other words, the assurance given in that situation is bound to be conditional on the parties staying together or at least, on the parties not breaking up due to the fault of the person giving the assurance.

37. Mr McDonnell further submits that the judge erred in awarding Miss Ottey a sum significantly in excess of that which he considered would have constituted reasonable provision for her if a claim under section 1(1)(e) of the Inheritance (Provision for Family and Dependants) Act had been successful.

38. The remaining issues on the appeal are whether the respondent incurred relevant detriment, and whether there was a sufficient causal connection between the promise and the detriment. The issue on the cross-appeal is whether, if those requirements were satisfied, the judge's order granted appropriate relief.

39. Miss Rich, following Mr McDonnell for Mr Grundy, accepts that the claimant need only show that a promise is an inducement, rather than an inducement to incur the detriment in question, that the detriment need not be purely financial and that the claimant may derive some benefit, and not simply pure detriment from the relationship but still show that the equity has arisen in his favour. The appellant's case is that the career interruption did not constitute significant detriment and that both elements of detriment relied on were inseparable from and outweighed by the substantial benefits enjoyed by Miss Ottey in the course of her relationship with Mr Andreae. Miss Rich submits that in reality Miss Ottey was Mr Andreae's girl friend and not just a carer. The detriment Miss Ottey incurred was insufficient: it must be out of the ordinary. The relationship between Miss Ottey and Mr Andreae was one of genuine mutual affection.

40. As to the causal relationship between the promise and the detriment, Miss Ottey believed that her relationship was as secure as marriage, she had already given up the opportunity of pursuing her career and she was aware of Mr Andreae's alcoholism and had provided him with support. Mr Andreae's family's evidence was that Miss Ottey believed from the outset that she could help him and that she acted out of affection and a sense of altruism which is inconsistent with the idea that she was influenced by assurances given by him.

41. The judge should not have assessed the case by reference to what would happen if the promise had been revoked. Miss Ottey's reaction was that she would have gone out and worked. However, it is highly speculative whether she would have succeeded in establishing a career. Moreover, as the promise was not revoked in Mr Andreae's lifetime and it was not suggested by Miss Ottey that she would have acted differently if the promise had not been made in the first place. Accordingly, it was unreal to suggest that she would have continued the relationship simply to obtain the benefit of the promises.

42. We have not called on the respondent to make oral submissions. In the respondent's skeleton argument it is submitted that reliance may be inferred where there is an unambiguous express promise as in the present case. In any event, Miss Ottey's evidence in chief and in cross-examination shows that she did rely on Mr Andreae's promises and that they did induce her to take the course which she took. Detriment can consist of the burden of caring and of having to be subservient to another's moods. Each case turns on its circumstances. Mr Andreae's demands required Miss Ottey to provide more care than could be characterised as part and parcel of an ordinary relationship. He required her to be by his side at all times. The evidence showed that caring for Mr Andreae was a demanding job. As to career interruption, there was evidence of Miss Ottey's career and Miss Ottey did not pursue her career at Mr Andreae's request. As to the causal relationship between the promise and the detriment, this will be readily inferred where detriment is suffered as a result of encouragement and in any event, was established on the evidence in this case. The judge was correct to ask what would happen if the promise had been revoked. The estate did not discharge the burden of showing that she would not have left if the promises had been revoked. Miss Ottey gave evidence that she would not have continued caring for Mr Andreae as before.

43. The respondent submits that it is clear that promises were made in order to allay Miss Ottey's fears and that they were calculated to influence her. Accordingly, it should be inferred that if the promises were withdrawn Miss Ottey would not have devoted herself as before to looking after Mr Andreae.

44. The respondent also submits that it would be unconscionable if the estate were permitted to resile from its promises. Mr Grundy and Mrs Blain acknowledged the debt which Mr Andreae owed to Miss Ottey. Moreover, Miss Ottey had helped to save Mr Andreae's life in

1997 when he had a heart attack in her presence by getting him to hospital quickly. Mr Jeal gave evidence that Miss Ottey did everything possible to help Mr Andreae to recover, and that, if she had not done so, he "would probably have died several years earlier than he did".

45. On the cross-appeal, Mr Kevin Garnett QC, for the respondent, submits that Miss Ottey would not have appealed if the executors had not done so. Reference was made to the decision in *Jennings v Rice* that the court must look at all the circumstances and that where assurances are specific the court will readily fulfil them specifically because there is a quasi-consensual element between the giver of the assurance and the person to whom the assurance was made. The respondent submits that the judge ought not to have found that the amount undoubtedly promised should have been discounted because of the separation and lack of proportionality because:-

i) It was no fault of Miss Ottey's that the relationship terminated.

ii) The parties' joint lives after the separation would, in any event, have only been three years at most.

iii) To honour the promises would not be disproportionate in view of the debt which Mr Andreae owed to Miss Ottey as his carer.

iv) The estate is substantial and the beneficiaries do not require the funds.

v) In *Jennings v Rice* [2002] WTLR 367, a much larger award (£200,000), was upheld.

vi) An award on the grounds of proprietary estoppel was quite distinct from an award under the 1975 Act and in any event Miss Ottey does not accept that the judge was

correct in assessing her claim as he did under that Act. The judge gave no reasons and the awards in the cases on which the judge relied would equate to an award of approximately £200,000 to £265,000 in the present case.

46. As respects the cross-appeal, the appellant seeks to uphold the judge's judgment. The judge correctly held that the claimant's expectation should not be satisfied in full. Even if the expectation was defined with clarity, it would be inappropriate to satisfy it in full given that the assurance was apparently predicated on her continuing dependency on Mr Andreae at his death and the relationship had terminated before that date.

Conclusions

47. The difficulty with Mr McDonnell's principal argument in the present case is that it raises questions of fact which were not investigated in the court below. Mrs Blain gave evidence that after the death of Mr Andreae Miss Ottey told her that Mr Andreae had given her his flat in Jamaica and a life interest in his houseboat but that since she had left him she did not expect to receive that property. This conversation was denied by Miss Ottey and she continued to deny it in cross-examination and the question of the assurance having been in any way conditional on the continuation of the relationship between her and Mr Andreae was not pursued.

48. If the appellant had wished to pursue this point at trial it would have been necessary to investigate further the question of what was promised. As it is, Mr Grundy accepts on this appeal, as he did at trial, that Mr Andreae made an express promise to Miss Ottey and that that promise is recorded in the letter of intent. The letter of intent describes Miss Ottey as "my companion", and was given in the context of a discussion arising out of a film Miss

Ottey and Mr Andreae saw in which a relationship came to an end when the man died leaving the female partner to rebuild her life, but these matters were not explored at trial.

49. The judge was satisfied that there was a promise. If he had felt that the promise was conditional by reason of the assumption to which he refers later in his judgment, in my judgment, he could not have found that the promise was given as he had done earlier in his judgment. This leads me to conclude that the judge refers to the assumption for the wholly different purpose of establishing the type of remedy which was appropriate in those circumstances. He makes no finding as to whether Mr Andreae and Miss Ottey made the assumption in question. I would accept Mr McDonnell's submission that there can be situations where a promise made by one party to a matrimonial or quasi-matrimonial relationship to another is conditional on the parties staying together. That is one of the matters which the judge has to consider when making his findings of fact. Such conditionality may arise expressly or by implication. In a case where the judge is not satisfied that the promise was conditional, he can, at the stage when he is considering what remedy is appropriate, go on to take into account, as the judge in this case did, the fact that, when the promise was made, the promisor at least must have contemplated that the parties would continue to live together.

50. Mr McDonnell does not put the matter on the basis of inconsistency but rather on the basis that the judge should have taken the assumption about living together for the rest of their lives to which he refers in his judgment into account when making his conclusions as to whether the equity was satisfied. As I see it, however, Mr McDonnell's challenge is really to the judge's finding of primary fact as to the making of the promise. It is not open to this court to interfere with that finding.

51. Mr McDonnell developed another point in his submissions, namely, that the amount which the judge ordered to be paid by the executor to Mr Andreae to Miss Ottey was inconsistent with the amount which he found he would have ordered to be paid to her if her claim under the Inheritance (Provision for Family and Dependants) Act 1975 had been established. Mr McDonnell submits that the point of principle is whether the judge should have awarded a much lower sum because the conditions to be taken into account under the 1975 Act are similar to those which have to be taken into account when satisfying proprietary estoppel. However, the fact remains that when considering the 1975 Act claim the judge took into account behaviour which had occurred after the termination of the relationship whereas Mr McDonnell accepts that such behaviour cannot be relevant to determining whether or not the equity exists. Mr McDonnell submits that nonetheless the judge's findings on the 1975 Act claim cast doubt on the validity or correctness of his findings on the proprietary estoppel claim. In my judgment, the judge's conclusion on the 1975 Act is distinguishable for the reasons already given and therefore that conclusion does not undermine the judge's conclusion on the proprietary estoppel issue.

52. Before discussing Miss Rich's submissions, it is necessary to refer to the law on proprietary estoppel. It is common ground that proprietary estoppel can arise where an owner of property encourages another to act to his detriment in the belief that he will obtain an interest in that other property. The underlying rationale is that it would be unconscionable for the maker of the assurance not to give effect to his promise. The matter must be looked at in the round. As Robert Walker LJ (with whom Beldam and Waller LJJ agreed) said in *Gillett v Holt*:

> "… it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the

> relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a "mutual understanding" may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end of the court must look at the matter in the round."

53. Later in his judgment, Robert Walker LJ set out the relevant principles as to the reliance and detriment required in proprietary estoppel citing the judgment of Balcombe LJ in *Wayling v Jones* (1993) 69 P&CR 170 as follows:-

> "(1) There must be a sufficient link between the promises relied upon and the conduct which constitutes the detriment – see *Eves v Eves* [1975] 1 WLR 1338, 1345 F-F, in particular per Brightman J *Grant v Edwards* [1986] Ch.638, 648-649, 655-657, 656 G-H, per Nourse LJ and per Browne-Wilkinson V-C and in particular the passage where he equates the principles applicable in cases of constructive trust to those of proprietary estoppel.
>
> (2) The promises relied upon do not have to be the sole inducement for the conduct: it is sufficient if they are an inducement – *Amalgamated Property Co v Texas Bank* [1982] QB 84, 104-105.
>
> (3) Once it has been established that promises were made, and that there has been conduct by the plaintiff of such a nature that inducement may be inferred then the burden of proof shifts to the defendants to establish that he did not rely on the promises – *Greasley v Cooke* [1980] 1 WLR 1306; *Grant v Edwards* [1980] Ch.638, 657."

54. In the course of his judgment, Robert Walker LJ by implication accepted the argument that what makes an assurance binding is the detrimental reliance on the promise by the person to whom the assurance is given (see [2001] Ch.210 at 227). After that time, it is too late for the maker of the assurance to change his mind.

55. Robert Walker LJ also discussed the requirement for detriment. The detriment must be sufficiently substantial to make it unjust or inequitable or unconscionable for the maker of the assurance to withdraw it ([2001] Ch.210 at 232F). Once the claim to equitable relief is satisfied, the court has to decide the appropriate form of relief.

> "The court approaches this task in a cautious way, in order to achieve … the minimum equity to do justice to the plaintiff." (per Robert Walker LJ in *Gillett v Holt* [2001] Ch.210 at 235).

56. In order to show that the person to whom the assurance was made was induced to act to his detriment, it is not necessary to show that he would have left the maker of the assurance if the promise had not been made, but only that he would have left the maker of the assurance if the promise had been withdrawn: *Wayling v Jones* (1993) 69 P&CR 170. Once the claimant shows that the promise was made, and that his conduct was such that inducement could be inferred, the burden of proof shifts to the maker of the promise to show that the claimant did not, in fact, rely on the promise: *Wayling v Jones.*

57. As to the remedy which the court should grant when proprietary estoppel has been established, this should be no more than is necessary to protect against unconscionable conduct: see *Jennings v Rice* [2002] WTLR 367, 378. The remedy must be proportionate to the detriment suffered (ibid., 378, 381, 386). The following passage from the judgment of Robert Walker LJ suggests that the requirement of proportionality is more easily satisfied where there was an assurance to transfer specific property:

> "Sometimes the assurances, and the claimant's reliance on them, have a consensual character falling not far short of an enforceable contract (if the only bar to the formation of a contract is non-compliance with s2 of the *Law of Property (Miscellaneous Provisions) Act* 1989, the proprietary estoppel may become indistinguishable from a constructive trust: *Yaxley v Gotts* [2000] Ch.162). In a case of that sort both the claimant's expectations and the element of detriment to the claimant will have been defined with reasonable clarity. A typical case would be an elderly benefactor who reaches a clear understanding with the claimant (who may be a relative, a friend, or a remunerated companion or carer) that if the claimant resides with and cares for the benefactor, the claimant will inherit the benefactor's house (or will have a home for life). In a case like that the consensual element of what has happened suggests that the claimant and the benefactor probably regarded the expected benefit and the accepted detriment as being (in a general, imprecise way) equivalent, or at any rate not obviously disproportionate. Cases of that sort, if free from other complications, fit fairly comfortably into Dr Gardner's first or second hypothesis (both of which aim to vindicate the claimant's

> expectations as far as possible, and if possible by providing the claimant with the specific property which the benefactor has promised).
>
> However, the claimant's expectations may not be focused on any specific property. In *Re Basham* [1986] 1 WLR 1498 the deputy judge (Mr Edward Nugee QC) rejected the submission that there must be some clearly identified piece of property, and that decision has been approved more than once in this court. Moreover (as the judge's findings in this case vividly illustrate) the claimant's expectations may have been formed on the basis of vague and inconsistent assurances. The judge said of Mrs Royle that she:
>
> > '… was prone to saying different things at different times and, perhaps deliberately, couched her promises … in non-specific terms.'
>
> He made that observation in relation to the failure of the contract claim, but it is relevant to the estoppel claim also.
>
> If the claimant's expectations are uncertain (as will be the case with many honest claimants) then their specific vindication cannot be the appropriate test. A similar problem arises if the court, although satisfied that the claimant has a genuine claim, is not satisfied that the high level of the claimant's expectations is fairly derived from his deceased patron's assurances, which may have justified only a lower level of expectation. In such cases the court may still take the claimant's expectations (or the upper end of any range of expectations) as a starting point, but unless constrained by authority I would regard it as no more than a starting point."

58. For my part I do not read this passage from the judgment of Robert Walker LJ as detracting from the general proposition that the relationship between the promise and the remedy must be proportionate, and that the promise, even if of a specific property, is only a starting point:

> "if the claimant's expectations are … out of all proportion to the detriment which the claimant has suffered, the court can and should recognise that the claimant's equity should be satisfied in another (and generally more limited) way." (per Robert Walker LJ at 384).
>
> "The essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result, and a disproportionate remedy cannot be the right way of doing that." (per Robert Walker LJ at 386).

59. Miss Rich's principal submission was that it was unreal to suppose that Miss Ottey stayed with Mr Andreae to obtain the benefit of his promises. She further submits that the judge's

categorisation of Miss Ottey's relationship with Mr Andreae as having two parts, that of girl friend and that of carer, was in error. She further submits that the detriment that Miss Ottey suffered was not out of the ordinary as it was required to be. She submits further that it is difficult to say that any obligation assumed in a quasi-matrimonial relationship is out of the ordinary in that type of relationship. The judge was, therefore, in error in saying that Miss Ottey's roles were severable. As respects this submission, the judge found that there was detriment and in my judgment there was material from which he could properly conclude that the tasks which Miss Ottey performed for Mr Andreae went well beyond anything that could be expected of her as a carer and girl friend.

60. Miss Rich also submits the judge placed too much emphasis on the answer to the *Wayling v Jones* question. In my judgment, Miss Ottey was asked the question which that case establishes is the relevant one and the judge was entitled to act on her answer. Once there was reliance, then on the authorities, the promise became irrevocable in equity. The onus shifted to Mr Grundy to disprove any causal connection with the promise, and the judge found, as he was entitled to do, that this burden had not been discharged.

61. As respects the cross-appeal, Mr Garnett submits that the judge did not properly analyse *Jennings v Rice* and should have started with specific assurances. In my judgment, this submission does not accord with the judgment. The judge's starting point was the value in money terms of the expectation which Mr Andreae raised. Moreover, the purpose of proprietary estoppel is not to enforce an obligation which does not amount to a contract nor yet to reverse the detriment which the claimant has suffered but to grant an appropriate remedy in respect of the unconscionable conduct. In my judgment, this was the exercise which the judge performed and he did so in a way in which he was entitled so to do.

62. As Mr McDonnell emphasised in his reply submissions, the remedy granted by the court in cases of proprietary estoppel must be proportionate to the detriment suffered: see *Jennings v Rice*. The judge was, therefore, entitled to treat the expectation that they would live together for the rest of their joint lives as a special factor which deprived Miss Ottey of any expectation to have the assurances enforced to the letter. Moreover, by the time the assurance was given, a large part of the time which they were to live together had passed.

63. Accordingly, for the reasons given above, I would dismiss both the appeal and the cross-appeal.