The High Court Recognises the Concept of a Remedial Constructive Trust

The High Court has recognised the remedial constructive trust, as part of the evolution of equitable remedies.

In Finnegan v Hand, the plaintiff, was a neighbour of the deceased but unrelated, and worked for many years on the deceased’s farm. He was paid modestly, and his family were close to the deceased. It was alleged that over time, the deceased made numerous promises to the plaintiff, sometimes in the presence of third parties, which led the plaintiff to believe that the deceased would favour him in his will. Many of the alleged promises were indirect or oblique. The deceased died intestate, and the plaintiff brought proceedings against the administratrix of the estate for a share in the estate, relying on promissory estoppel or a remedial constructive trust or in the alternative on a quantum meruit claim against the estate for unpaid work done.

White J accepted that the plaintiff worked on the farm for 38 years to an extent far beyond that required of an ordinary employee; that he was substantially underpaid and that he made a significant sacrifice in giving up an offer of social housing in 1987 which was considered too far away from the farm - the deceased later provided a site on which the plaintiff built a house for his family. The court also accepted that on different occasions, the deceased directly and obliquely led the plaintiff to believe that the deceased would, at least, name the plaintiff as a beneficiary in his will, and that the plaintiff thought that he had assurances that he would benefit under the will and relied on those assurances to his substantial detriment. However, there was considerable uncertainty about what exactly the deceased proposed in terms of a bequest.

The court noted that the basis of the doctrine of proprietary estoppel “...is to prevent a person from insisting on his strict legal rights where to do so would be inequitable having regard to the dealings which have taken place between the parties. It developed as an exception to the formalities required for the creation of interests in land and the rationale behind the doctrine could be said to be the prevention of unconscionable behaviour...”

Considering the judgment of the Court of Appeal of England and Wales in Gillett v Holt, the court noted that doctrine cannot be “subdivided into three or four watertight compartments”, because the quality of the relevant representations or assurances is likely to influence the issue of the reliance and reliance and detriment are often intertwined.

3 [2001] Ch 210, 225.
A constructive trust has been defined in Ireland as “…one which arises by operation of law and which ordinarily comes into being as a result of conduct and irrespective of the intention of the parties. In general terms, it can be described as a trust which is imposed by equity in order to satisfy the demands of justice and good conscience and to prevent a person deriving profit from fraudulent conduct or taking unfair advantage of a fiduciary position”.

While traditionally the English and Irish courts have characterised the constructive trust as a substantive institution (which arises in defined situations, eg breach of fiduciary duty or wrongful assumption of trust duties by a stranger to the trust), there have been recent indications of willingness to regard it more as a remedial concept. In this regard, the court placed reliance on the House of Lords judgment in Thorner v Majors, which dealt with similar inexact and oblique assurances in respect of future bequests, and the overlapping nature of the remedies of proprietary estoppel and constructive trust.

In Thorner, Lord Scott said “one of the features of the type of cases of which the present case is an example is the extent to which proprietary estoppel and constructive trust have been treated as providing alternative and overlapping remedies…” and added that “…cases where the relevant representation has related to inheritance prospects seem to me difficult…..to square with the principles of proprietary estoppel …. and, for my part, I find them made easier to understand as constructive trust cases. The possibility of a remedial constructive trust over property, created by the common intention of understanding of the parties regarding the property on the basis of which the claimant has acted to his detriment, has been recognised at least since Gissing v Gissing”.

White J concluded that the judgment in Thorner, where the court found that a constructive remedial trust arose, though representations were never made expressly but were a matter of implication and inference from indirect statements and conduct, should be regarded as a further evolutionary step in the development of proprietary estoppel and, in particular, its overlap with constructive or remedial constructive trusts.

Accordingly, because of the behaviour of the deceased in holding out to the plaintiff that he would be rewarded with an interest in the farm, which led to the plaintiff devoting his life to work on the farm, it was held that it would be unconscionable that the estate would accrue entirely to the deceased’s blood relations. While the court could hold that proprietary estoppel applied, it preferred to apply a remedial constructive trust, because of the uncertain nature of the promises made. It accordingly allowed the plaintiff a defined share in the farm, stock and machinery, but giving credit for the site gifted to the plaintiff, and determined that money in bank accounts at the date of death should go to the next of kin rather than the plaintiff.

Conclusion

This judgment is a useful reminder that equitable concepts are flexible and capable of evolving to respond to changing circumstances, and may be especially relevant where the assertion of what appear to be strict legal rights would lead to a clear injustice or unconscionable outcome.
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