Farm dispute in the headlines – estoppel and unjust enrichment

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Published: 10 Apr 2024

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Discussing the case of Mate v Mate.

Farm disputes that go to court highlight a number of protectionary points for farm tax advisers:

- The need to encourage farmers from an early stage of commercial transactions/arrangements to have formal legal documentation in place and also tax planning (see Starting Well, Taxation 16 March 2023)
- To appreciate the current high value of farms and to incorporate capital taxes/succession planning into inter-family arrangements

Farming family disputes have been back in the limelight with the High Court handing down its decision in *Mate v Mate* [2023] EWHC 238 (Ch). Over the course of 7 days, in the latter part of 2022, Andrew Sutcliffe KC considered claims founded in proprietary estoppel and unjust enrichment pursued by Julie Mate against her mother (Shirley) and against her two brothers (Robert and Andrew). The case is a classic of the farming sons inheriting the farm but provision for farming daughters not being made with subsequent development monies.

The case showed that each component of the test for proprietary estoppel must be proven in order to mount a successful claim. Unless a Claimant is able to establish that a promise or assurance of sufficient clarity has been made in addition to demonstrating detrimental reliance and detriment, a claim will fail. The Mate case is a reminder to farmers of the need to agree payment for work before it is undertaken and generally to strengthen farm paperwork, legal documentation and tax planning. Also, the case highlights the fact that generally farming families are prone to dispute and the need to have strong legal documents for every area of farming life has never been more important, especially with high values.

The facts, the Will and the toll on the family

Shirley and Donald Mate had married in 1954; there were 5 children in the marriage – 2 sons and 3 daughters. They ran a dairy farm and also a milk bottling and milk retail business. The sons became partners in the business shortly before their father passed away in 1992. By the time of his death, Donald owned land (mostly jointly with Shirley) totalling around 140 acres and the partnership rented a similar amount

again. Donald left his share of the farm business to Shirley, and his two sons, in equal shares. He also passed his share in other property that he owned jointly with Shirley, to his sons in equal shares.

Julie Mate had been unhappy with her father's Will, which left the sum of £36,000 to the daughters in equal shares. Such was the lack of spare cash of the farming partnership at the time, that this provision was later substituted with a gift of 3 cottages, because there were insufficient funds to pay the daughters. However, Julie did not challenge her father's Will at the time and acknowledged during the trial that she ought to have done. Where a party wishes to challenge a Will, they should seek legal advice at an early stage and address matters promptly. The feeling of 'injustice' around her father's Will was clearly a motivating factor for Julie Mate, leading to a situation where some 30 years later, in this litigation, she was seeking to redress the balance as well as be rewarded for her work.

There is no doubt that these farm dispute cases do take their toll on families; the Judge observed that this litigation had 'torn' this family 'apart'. By the time that the trial came around, Shirley (now 89, 88 when she gave evidence) had abandoned her original defence and substituted it for one which accepted her daughter's claims. The result of such a change resulted in her sons and their children no longer visiting or speaking to Shirley. There must be a purge to encourage farmers to pay for good tax and legal work before to try and save these expensive court cases.

The potential development – Julie's work

The facts were that, in around 2007, Julie started looking into the potential development of around 40 acres of the farm (the Netherton Moor land). She identified a suitable planning consultant, Mr Hartley, and arranged to bring him to a meeting at the farm with her mother and brothers. Following that meeting in June 2008, Shirley, Robert and Andrew agreed that Julie should engage the services of Mr Hartley to assist her in achieving the removal of the Netherton Moor land from the Green Belt, with a view to such land being allocated for housing on the Council's Local Plan.

It was Julie's case that she worked on this project with Mr Hartley at various times between 2008 and late 2015, in reliance on promises made to her by Shirley that, if she succeeded in removing the Netherton Moor land from the Green Belt and securing its allocation for housing, the proceeds of sale of that land resulting from its sale to a developer would be shared equally between Shirley and her five children. There is the irony that it was Julie's work that increased the value. Obviously, such work can be arduous and require focus and determination and an agreed reward.

In late 2015, the Council published its draft Local Plan which showed that part of the Netherton Moor land had been released from the Green Belt. Julie sent a letter to Andrew, copied to the rest of the family, informing them of this very positive news in terms of development on any standards. By this time, Julie's mother and her brother had entered into an option agreement with the house builder Persimmon, although Julie only found out about this after the event. This agreement should have been subject to extensive legal and tax planning and the advisers should have been made aware of Julie's work. Farmers must be encouraged to provide more detail. The agreement with Persimmon was to build 250 houses. A substantial farm

development that perhaps could not have been foreseen by Donald but became more obvious as Julie undertook work.

Proprietary estoppel claim

The focus of this estoppel claim is Shirley's promises to her daughter. Julie claimed that her brothers knew of their mother's promises and that they, together with their mother, were aware of the steps that she was taking in reliance on those promises. Accordingly, Julie claimed that her mother and brothers were estopped from denying that on the sale of the farmland she and her sisters would receive with them an equal share of the proceeds of sale. The Judge was of the view that there was no documentary evidence to show that such promises were in fact made the first time Julie even mentioned there was in a letter in 2020. The starting point for the Judge (having set out an extensive account of the evidence/chronology) was to consider whether Shirley had made promises to Julie of sufficient clarity, such that it was reasonable for Julie to rely on those promises and therefore be in a position to make an estoppel claim.

The Judge found that there was no documentary evidence to support the suggestion that either specific or even generic promises had been made. This was despite letters having been written by Julie to her mother and her sisters during the relevant time. The Judge found that the content and tone of those letters would have been different if the promises had been made as alleged, in some instances finding the content "inconsistent" with Julie's allegations. Julie should have taken legal and tax advice at this point. The Judge found that Shirley was likely to have said that her daughters "would be looked after financially" if a windfall was achieved on the sale of the Netherton Moor land, but the promise/assurance went no further than that. In the context of proprietary estoppel, it was not a promise or assurance of sufficient clarity, such that it would be reasonable for Julie to rely on it.

The Judge concluded therefore that no equity arose and the issues of reliance and detriment did not fall to be considered. Essentially this failed so the claim had to fall to unjust enrichment. Farmers and those farm family members must learn from this to ensure such agreements for work and future payment are in writing, ideally supported with legal and tax advice.

Unjust enrichment

Judge Andrew Sutcliffe KC was of the view that the brothers had been "unjustly enriched" by her years of work in getting the land removed from the Green Belt so it could be sold to developers to build a 250-house estate and it was right that she should share in the windfall. Julie explained that she had wanted to have a full role as an adult in the farm. However, Robert, now 65, and Andrew, 60, had made it clear Julie was not wanted there and, as a result, she did not return and become involved in the farm business after university. Julie studied animal science at university and worked as an agricultural journalist and a senior executive in dairy companies and farming organisations. Julie claimed that her mother and brothers had benefited hugely from her work and that she never intended to carry out the work for free. Ruling in her favour on that point, the Judge said: "I accept Julie's evidence that at no time did she tell either of her brothers or Shirley that she would work on this project for nothing, without expectation of any reward." The Judge was of the view:

“From the time when the issue was first raised by Julie with Shirley, Andrew and Robert in 2004, Julie was clear that she saw the possibility of developing part of the farm as a way she and her sisters could benefit.

There is no doubt that Shirley, Andrew and Robert obtained the advantage of Julie’s services, at Julie’s expense, in circumstances where they had notice of the services, they knew that Julie expected a reward for her services, and they could have rejected her right to the benefit, but did not. The brothers were enriched by Julie’s services in circumstances which were unjust because they knew she was not providing those services gratuitously and they made no attempt to reward her for them. In the circumstances, Andrew and Robert have been enriched by Julie’s services and such enrichment was unjust.” By way of compensation, Julie claimed a share in the proceeds of sale of the Netherton Moor land, or such other compensation as the court considered appropriate.

The Judge was satisfied that it was clear that the work undertaken by Julie was material in unlocking the development potential in the Netherton Moor land; that she expected to be compensated; and that the enrichment was unjust. In order to determine the appropriate remedy that was due to Julie, the Judge considered the input of the experts, whose expertise lay in planning matters. The evidence included the significance of the work undertaken by Julie and Mr Hartley and the extent to which it impacted the Council’s decision making in relation to the Netherton Moor land for the future planning and also how to value the work undertaken.

Calculation of amount owed

The Judge took into consideration that Julie was not in fact a professional land promoter appointed under a contract, nor did she play any role in the later stages of the planning process which resulted in the grant of planning permission. The Judge therefore concluded that:

“Accordingly, I conclude that the objective market value of the benefit of the services provided by Julie to Andrew and Robert should be assessed by reference to a commission fee of 7.5% of £8.7 million (being the amount of the uplift in the market value of the land from £300,000 to £9 million). On that basis, she is entitled to be paid £652,500.” (para 299).

This farm case shows again like so many farm cases before on this subject that the essential ingredient to claims is evidence of genuine reasons for a claim. The reality of farming is that until the development monies materialised there simply wasn’t the cash flow available to pay the sisters without selling the farm. In 1992, Donald was probably doing best by what he thought was the survival of the farm and what were then historic traditions of farming families. An overage agreement could have helped on Dad’s death, however they are difficult to draft and foresee. Although a simple statement in the Will that should the farm be developed then the proceeds should be divided between the daughters. Julie said she was left “devasted and dumbfounded” when her father Donald left the farm to his wife Shirley and their sons when he died in 1992. When Julie undertook the planning work, fees should have been agreed and these could have been success fees and even on a “no win no fee” basis. The problem is that this would have meant the farming family discussing matters which many farming families find difficult!

Tax planning

With hindsight, the calculations should have been made at the tax planning stage. The payments should have been part of the deduction to reduce capital gains tax (CGT) payable by Shirley, Andrew and Robert and likewise was taxable in Julie's hands. Forward planning could have sorted this out as tax efficiently as possible for all the family. Farmers and tax advisers can learn from this moving forward as to the need for documentation and consideration of all family members at appropriate times.

*The views expressed are the author's and not ICAEW's

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