Neutral Citation: [2013] IEHC 463

THE HIGH COURT

[2008 No. 7678P]

BETWEEN

MICHAEL COYLE

PLAINTIFF

AND

MATTHEW FINNEGAN JUNIOR AND FRANCIS FINNEGAN

DEFENDANTS

Judgment of Ms. Justice Laffoy delivered on 25th day of October, 2013.

The proceedings and the plaintiff's claim as pleaded

1. These proceedings were initiated by a plenary summons which issued on 18th September, 2008. In the statement of claim delivered on 23rd September, 2008, it was made clear that the defendants were being sued as executors of Peter Alphonsus O'Reilly (the Deceased), who died on 26th October, 2007. Although the grant of Probate was not put in evidence, the record in the Probate Office discloses that on 3rd March, 2010 Probate of the last will of the Deceased issued from the District Probate Registry in Cavan to the defendants.

2. The core factual basis of the plaintiff's claim as pleaded is that from 1990, at the request of the Deceased, he provided services to the Deceased at his farm in County Cavan on the basis of an express or an implied promise by the Deceased that, in recompense for carrying out such work and providing services, the Deceased, rather than making payments to the plaintiff in respect thereof during his lifetime, would devise and bequeath the farm to the plaintiff by his will together with all livestock and machinery thereon at the date of his death. The statement of claim discloses that the Deceased's farm is registered on Folio 173F of the Register of Freeholders, County Cavan. It was pleaded that the plaintiff worked for and provided services to the Deceased from 1990 until about 2003. However, by the terms and provisions of his last will and testament the Deceased failed to honour his promise to the plaintiff. The following reliefs were sought by the plaintiff against the defendants in the prayer in the statement of claim:

> (a) an order for specific performance, presumably on the basis that there was a contractual relationship between the Deceased and the plaintiff on foot of which it was agreed that the lands registered on Folio 173F and the livestock and machinery thereon at the date of the death of the Deceased would, on his death, be transferred to the plaintiff;
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> (b) ancillary orders the objective of which is to procure the registration of the plaintiff as the owner of the lands registered on Folio 173F;
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> (c) a declaration that the defendants hold the lands registered on Folio 173F upon a constructive trust or, alternatively, an implied, or resulting trust in favour of the plaintiff;
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> (d) a declaration that the defendants are estopped from denying the plaintiff's entitlement to be registered as beneficial owner of the lands registered on Folio 173F by reason of the conduct of the Deceased;
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> (e) ancillary orders the objective of which is to make the defendants account for the rents and profits of the lands from the date of the death of the Deceased; and
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> (f) as an alternative remedy, the payment of the sum of €825,000 by the defendants to the plaintiff "*in quantum meruit and/or quantum valebat*".

3. In their defence the defendants traversed all of the allegations made by the plaintiff and denied that he is entitled to the relief claim or any relief. There were no specific pleas in the defence and, in particular, it was not pleaded that any element of the claim was statute-barred.

The circumstances of the Deceased and the wills he made

4. The Deceased was born on 14th February, 1935. He never married and he died a bachelor and without issue. He lived with his mother on the farm, which comprised of about fifty acres. His mother died in 1990. The plaintiff's evidence was that at that stage the Deceased, being totally dependent on his income from the farm, was anxious to increase the income. The plaintiff, who was his second cousin once removed had, while he was at school, helped the Deceased on the farm. The plaintiff's evidence was that by 1990 or 1991 the Deceased's hips "were annoying him". He needed help on the farm and he asked the plaintiff to help him. In August 1991 at an arranged meeting in a public house in Gowna he told the plaintiff, who was accompanied by his wife, that he needed his help on the farm, that he was going to make a will and he was going to leave "the place" to the plaintiff. He would have to get his hips done in the future. He would require the plaintiff to oversee the work and keep an eye on the place while he was away. If he changed his mind, he would let the plaintiff know. On the following day, the Deceased told him that the "job" was done, meaning that he had made his will.

5. The Deceased did in fact make a will on 12th August, 1991 at the offices of George V. Maloney & Co., Solicitors, in Cavan. The will was witnessed by a legal assistant in that office, Mary Davis and by George Maloney. Mary Davis, who drafted the will, did a detailed attendance of what transpired on the day and she testified at the hearing. In that will, the Deceased appointed Mr. Maloney and Ms. Davis as executors. He made a specific devise of "my dwelling house, contents therein together with my farm of land and all cattle, stock and farm machinery" to the plaintiff, whom he described as his first cousin. He devised the residue of his estate to his two sisters, one of whom lived in England and one of whom lived in Wales, in equal shares.

6. The attendance prepared by Ms. Davis is very informative. She ascertained that the assets of the Deceased included the farm but he was not very forthcoming about whether he had bank accounts and all she ascertained was that the Arva branch of Ulster Bank

was his bank. Ms. Davis recorded what the Deceased informed her about the devise to the plaintiff as follows:

> "He said he has a first cousin Michael Coyle who is now residing at Drumshinney Arva who is very good to him. He has told Michael Coyle that he is leaving him the house and lands by Will and he said that he felt that it is better to tell Coyle this so that Coyle would assist him in the future. He said that in the event of him changing his Will at any time and leaving the house and lands to somebody else, that he would tell Coyle this."

The Deceased discussed inheritance tax with Ms. Davis and he wondered what the plaintiff would have to pay. His assessment of the value of the house and lands at that stage was IR£50,000. Ms. Davis explained to him the relevant inheritance tax threshold and the likely liability for inheritance tax at the time, taking into account agricultural relief. She also explained to him that as regards his sisters, the relevant inheritance tax threshold was IR£20,000. The Deceased then said that both the sisters were away for a long time and were quite comfortable. Ms. Davis then recorded that the Deceased said that he wanted to leave his dwelling house and the contents therein, his farm and land and all cattle, stock and farm machinery to the plaintiff and whatever would to left over to his two sisters in equal shares. Ms. Davis drew up the will, which will be referred to as the August 1991 Will, in accordance with his instructions and it was executed. Ms. Davis made a note that the plaintiff had "perfect mental capacity". As regards his physical condition at the time, and in particular his mobility, in her evidence she pointed out that he had been able to come up the stairs to the third floor.

7. Despite the fact that it is pleaded that the plaintiff helped the Deceased on the farm until about 2003, his evidence was that he did nothing for the Deceased after 2000. In circumstances which I will outline later, the Deceased got help from the defendants' family members from around December 2002. The Deceased made a new will on 8th August, 2003, which again was made in the office of George V. Maloney & Co., and was drafted by Ms. Davis, who recorded in an attendance note what transpired on that day. The Deceased revoked the August 1991 Will. He appointed Mr. Maloney and Ms. Davis as executors. He made two relatively small charitable bequests which aggregated €1,100. He gave a legacy of €5,000 to the plaintiff "for assistance rendered to me some years ago". In this will he specifically devised his "dwelling house, contents therein together with my farm of land and all cattle, stock and farm machinery" to the second defendant absolutely. He also appointed the second defendant his residuary legatee. The will was duly executed and witnessed by Ms. Davis and another member of the staff of the firm of George V. Maloney & Co.

8. Once again, the attendance note prepared by Ms. Davis is both informative and instructive. The Deceased had made an appointment to attend the solicitors' office the previous week. He told Ms. Davis he was sixty eight years of age at the time. She noted that he "talks constantly and talks very fast". Ms. Davis got the August 1991 Will, which had been retained in the office of George V. Maloney & Co., and told him that she would read it over to him. His response was that there was no need to read it over, that he knew what was in it and that he had made it in 1991. She then recorded that he told her that the plaintiff had not been helping him since 2000. She recorded that he said that he found going up to him was only imposing himself on the plaintiff. The plaintiff knew about the August 1991 Will. She then recorded that the Deceased said the following:

> "I did pay him a bit of money over the years. I bought straw and gave him some of it. I was doing what I was not fit to do. I thought about selling my property but I then felt that if I was walking around with a lot of money in my pocket, I would not be happy either. I was in hospital following a fall around 17th March, 2003. I used to get Frank Finnegan's father . . . to drive me around a bit. He told me I should have my hip replacements done and I mentioned that if I went into hospital, I would have nobody to look after my place. He said his lads would look after it. Frank Finnegan gets his brother to help sometimes. Frank Finnegan has been helping me since about January 2003. He is single, about twenty eight years old and he is my best friend. Frank Finnegan is no relation."

Ms. Davis recorded that the Deceased told her he wanted to leave the charitable bequests and that he wanted leave everything else to the second defendant. He told her that he had "a site for sale at the moment". He also told her that there was a bit of money due to Ulster Bank in Arva and that he wanted to pay the bank off. After she had prepared the will in accordance with his instructions and read it over to him, the Deceased told her he wanted to include in the will a legacy of €5,000 to the plaintiff for assistance rendered to the Deceased some years ago. Ms. Davis recorded that he went on to say: "It is better make some mention of him in the Will". She amended the will and he confirmed it was in order. The will, which will be referred to as the August 2003 Will, was duly executed. Ms. Davis recorded that the Deceased had "one hundred per cent mental capacity" and she recorded the name of his general practitioner. She also recorded that at the time the Deceased was awaiting an appointment to have his hip done.

9. The Deceased made his last will and testament on 14th September, 2004. Once again, the will was drafted in the offices of George V. Maloney & Co. On this occasion, Ms. Davis had no involvement and there is no attendance note of what transpired. The only variations from the August 2003 Will were that the Deceased omitted the legacy of €5,000 to the plaintiff and made no provision at all for the plaintiff. He divided the land comprised in Folio 173F between the second defendant and his brother, the first defendant. The second defendant was devised the land on the northern side of the public road, which was identified by reference to the Land Registry map. The first defendant was devised the land on the south of the public road, which again was identified by reference to the Land Registry map. That devise to the first defendant was with the benefit of the herd number attaching to the lands registered on Folio 173F. It was provided that, if there were insufficient funds to discharge the pecuniary legacies, they would be charged on the lands registered on Folio 173F until paid. The two defendants were named as residuary beneficiaries. The will, which will be referred to as the September 2004 Will, was duly executed and witnessed by two members of staff of George V. Maloney & Co., one being a solicitor who is no longer with the firm.

10. Subsequently, by a transfer dated 22nd September, 2006, the Deceased transferred a site of Folio 173F to the first defendant. The transfer was expressed to be made in consideration of €2,000. The site comprised 0.72 acres and it had road frontage. It was valued at €60,000 in June 2006. The evidence did not establish a link between that transaction and the Deceased's reference in August 2003 to having a site for sale or what, if anything, happened in relation to that proposed sale. In my view, neither matter is of particular relevance to the issues before the Court.

11. The Inland Revenue affidavit in connection with the estate of the Deceased, which was sworn by and filed on behalf of the defendants, disclosed that he had assets, the gross value of which at the date of his death was €586,700, which included the land, which was valued at €570,000, and the farming assets, which were valued at €16,500. The debts of the estate amounted to €36,554.42. Accordingly, the net assets were valued at €550,145.58. Of course, the value of the land has diminished since late 2007. It was valued at €475,000 in July 2012 by Cully & Sons on behalf of the plaintiff and the valuation report was put in evidence by agreement. Although there was a slight dispute as to the valuation, no evidence as to the current value of the land was adduced on behalf of the defendants.

The plaintiff's evidence

12. The plaintiff is forty nine years of age. From 1984 to 1990 he worked as a production manager in a factory at Killeshandra.

Unfortunately the factory closed down and he was made redundant. He was farming from 1990 on his own farm and on two small holdings which he leased. He farmed the three holdings as a unit at the time and he increased his suckler herd. He was helping the Deceased on his farm from 1990 through 1991. After August 1991, he started to help the Deceased "a bit more". According to the plaintiff, the Deceased went "down the hill a bit" and he was not fit to operate a tractor. The plaintiff was not paid for the work he did. He worked for the Deceased because he was promised the farm. Otherwise he would not have done it; he would have got a job elsewhere.

13. The plaintiff's evidence was that between 1993 and 1998 he did a lot of extra work on the Deceased's farm. At that time the "REPS" Scheme was in place. The farm had to be stock proof, it had to be fenced, there had to be adequate buildings for the cattle, the main drains had to be cleared, a lane had to be opened up and so forth. According to the plaintiff it was a "full time job". He got no pay. He understood he was going to get the place and he was building it up for himself. The Deceased was glad to have his help. The plaintiff identified one event which was of some significance, although he did not identify exactly when it occurred. As I understand it, it was between 1993 and 1998. The Deceased was considering early retirement. He attended a seminar in relation to State early retirement schemes at Ballyhaise Agricultural College and the plaintiff accompanied him. To avail of the early retirement scheme, he would have had to sign over the farm to a suitable candidate. On the way home from the seminar he told the plaintiff that he thought the scheme suited a father and son situation better and he had decided he would leave things as they stood. Not unreasonably, the plaintiff interpreted this statement as confirmation that their relationship would continue as it was and that the plaintiff would become entitled to the farm on the death of the Deceased.

14. Between 1991 and 1997 the plaintiff did his own farm work "in between" working on the Deceased's farm. In September 1997, Mr. Jim Sheridan asked him to do "a bit of hedge cutting" and he did some of that work when he had time. In 1998 he got a contract with the ESB to clear hedges under electricity lines. While it was not a full-time job, and it depended on the weather, it left him busy. In 1999 he got two boys to help him with the farm work on his own farm and on the Deceased's farm. In the year 2000 he had a clearance sale of his own cows, because he was finding it hard to do all the work. However, he was at the Deceased's farm every day, although not all day except occasionally. His work on the Deceased s' farm slowed down after 2000. He got more work from Mr. Sheridan. The plaintiff's evidence was that the Deceased did not mind. His evidence was that the Deceased "got a contractor". Their relationship did not change. He gave as an example the fact that when the Deceased was in hospital following the accident on 17th March, 2003, the plaintiff's name was given as his next of kin. The Deceased's mobility got worse between 2003 and his death in 2007. The plaintiff was aware that "the Finnegans" were doing a lot of driving for him, but he was not aware of any other relationship between them.

15. As recorded earlier, the plaintiff's evidence, which I accept as accurate, was that on the day after he made the August 1991 Will the Deceased told him that he had made the will. However, the Deceased did not tell him that he changed his will in 2003 and that he changed it again in 2004. The plaintiff's evidence was that, although he was aware that members of the Finnegan family were "on the scene" since 2002, it never crossed his mind that he might be cut out of the will.

16. It was put to the plaintiff in cross-examination that the Deceased was able to drive a tractor and that he was able to do most of the farm work himself and that the plaintiff had exaggerated his role in running the Deceased's farm. The response of the plaintiff was that the Deceased relied on him a good bit. In my view, what the Deceased told Ms. Davis both in August 1991 and in August 2003 bears that out.

The defendants' evidence

17. The evidence of the first defendant was that his first involvement with the Deceased was in December 2002. At the time the Deceased had "a bad dose of flu" and he asked for help with the cattle. The first defendant gave the help he sought and then helped him more frequently thereafter. The second defendant also helped the Deceased in running the farm. Both of the defendants were in full-time jobs at the time, the first defendant as a postman and the second defendant as a factory worker. However, it is clear on the evidence that they spent a considerable amount of time with the Deceased between 2003 and his death in October 2007 and he obviously appreciated their help and company.

18. Both defendants gave evidence of driving the Deceased from Arva to Ballinamore in 2006 to get the cattle "dosed". They stopped along the way. The Deceased told them that he had changed his will and he showed them a copy of the will, which I assume was his last will, the September 2004 Will. The issue was never raised by the Deceased again with either of them.

The law

19. The legal bases on which the plaintiff's claim was pursued, which differed slightly from his claim as pleaded, were:

> (a) that the Deceased was contractually bound to provide in his last will and testament that the plaintiff would become the owner of the lands registered on Folio 173F and also the stock and farm machinery on the land at the date of the Deceased's death, the remedy being sought being an order for specific performance;
>
> (b) that under the doctrine of proprietary estoppel the defendants are estopped from denying the plaintiff's entitlement to be registered as owner of the lands registered on Folio 173F; and
>
> (c) alternatively, that the plaintiff should be compensated on a *quantum meruit* basis for the services he provided to the Deceased between 1991 and 2000.

20. One significant difference from the case as pleaded was that, at the hearing, the plaintiff did not pursue a claim for a payment of €825,000 on a *quantum meruit* basis. On the contrary, evidence was given on behalf of the plaintiff by Mr. Patrick Fitzpatrick, an agricultural consultant, who prepared a report outlining the labour and other input costs of the plaintiff on the Deceased's farm between 1991 and 2000. Mr. Fitzpatrick explained his methodology and calculated the costs of the various aspects of the services provided by the plaintiff over that period in a very clear manner. In summary, he calculated that the costs of the plaintiff's services in running the farm, of his input into silage making, of the supply of machinery by him, and his labour input into capital works he contributed to in consequence of the "REPS" Scheme amounted to €74,004.51, (being the equivalent of IR£58,283.29).

21. Another difference was that, at the hearing, counsel for the plaintiff did not, in reality, pursue the constructive trust basis of the claim and the emphasis was on proprietary estoppel.

22. While I have considered the wide range of authorities relied on by counsel for the parties, and, in particular, by counsel for the plaintiff, I do not find it necessary to address all of them in this judgment. Instead, I propose outlining the legal principles discernible in the three authorities which I find of most relevance and then considering what is the proper approach to the application of those principles to the plaintiff's claims. The three authorities are:

(a) the decision of the Supreme Court delivered on 13th February, 1997 in *McCarron v. McCarron* (Unreported);

(b) the decision of the Court of Appeal in England and Wales in *Gillett v. Holt* [2000] 3 WLR 815; and

(c) the decision of the High Court (Hogan J.) in *Coleman v. Mullen* [2011] 4 I.R. 603.

There is a very helpful commentary on the present state of the law on proprietary estoppel in Delany on *Equity and the Law of Trusts in Ireland* (5th Ed.) (at p. 759 et seq.) and I have had regard to that commentary in considering the plaintiff's claim based on proprietary estoppel.

McCarron v. McCarron

23. As recorded in the judgment delivered in the Supreme Court by Murphy J., the defendant in those proceedings was the personal representative of George McKenna who died intestate in 1992. The plaintiff was a son of a first cousin of Mr. McKenna. In 1976, when he was attending vocational school, the plaintiff was sent by his father to help Mr. McKenna with his farm. The evidence was that Mr. McKenna had asked the plaintiff's father to "send out somebody to give me a hand with hay and to do odd bits of turns". From 1976 onwards the plaintiff helped Mr. McKenna with the management and operation of the farm. While the extent of the assistance provided by him may have been questioned, the fact that at least some assistance was provided continuously over a period of sixteen years had not been challenged. The plaintiff's case was that Mr. McKenna entered into an agreement with him in the year 1980 to remunerate him for the work which he did on the farm by devising to him all of his lands. He had approximately twenty seven acres which were divided between the "home farm" and the "outside farm". It was contended that that agreement was confirmed or extended by a further agreement made between Mr. McKenna and the plaintiff in the summer of 1984. The proceedings were for an order for specific performance, but there was also a claim for relief on the basis of proprietary estoppel. 24. In the High Court, Carroll J. upheld the claim of the plaintiff based on contract. The only issue raised was whether the conversations constituted a contract to devise Mr. McKenna's lands to the plaintiff and, in particular, the defendant raised no issue in regard to the absence of any note or memorandum in writing of the transaction. The plaintiff's evidence of the actual discussions which took place between himself and Mr. McKenna are quoted in the judgment of Murphy J. on the appeal to the Supreme Court. While Mr. McKenna gave no assurance in such plain terms as the Deceased gave to the plaintiff in this case, Murphy J. found that the High Court was correct in holding that there was evidence of a sufficient degree of certainty of a contract between the plaintiff and Mr. McKenna by which the latter agreed to devise his farms to the plaintiff and it was appropriate for the Court to grant specific performance of that contract.

25. That being the case, the observations made by Murphy J. in relation to proprietary estoppel were clearly obiter. He quoted the circumstances in which proprietary estoppel operates by reference to the following passage from *Plimmer v. Mayor of Wellington* (1884) 9 App. Cas. 699, which was an appeal to the Judicial Committee of the Privy Council:

> "Where an owner of land has invited or expressly encouraged another to expend money on part of his land on the faith of an assurance or promise that that part of the land would be made over to the person so expending his money a Court of Equity will *prima facie* require the owner by appropriate conveyance to fulfil his obligation and when, for example, for reasons of title, no such conveyance can effectively be made, or *(sic)* a Court of Equity may declare that person who has expended the money is entitled to an equitable charge or lien for the amount so expended."

Murphy J. went on to state that most cases and, in particular, the Irish cases of *Cullen v. Cullen* [1962] I.R. 268 and *McMahon v. Kerry County Council* [1981] ILRM 419, concern disputes where a plaintiff had suffered or would suffer detriment as a result of spending money on the erection of premises on lands owned by the defendant in circumstances where it would be unjust to deprive the plaintiff of his money or assets. However, he went on to state as follows:

> "In principle I see no reason why the doctrine should be confined to the expenditure of money or the erection of premises on the lands of another. In a suitable case it may well be argued that a plaintiff suffers as severe a loss or detriment by providing his own labours or services in relation to the lands of another and accordingly should equally qualify for recognition in equity. In practice, however, it might be difficult to determine the extent of the estate or interest in land for which a plaintiff might qualify as a result of his personal efforts. Perhaps a claim of that nature would be adequately compensated by a charge or lien on the lands for a sum equivalent to reasonable remuneration for the services rendered. However it is unnecessary for me to consider further the application of the still evolving principles of proprietary estoppel to the facts of the present case having regard to the views which I take to the existence of a contract between the Plaintiff and [Mr. McKenna] and the appropriate remedy for enforcing the same."

Gillett v. Holt

26. The decision of the Court of Appeal in *Gillett v. Holt*, in my view, may be properly characterised as a step in the evolutionary process of the development of the doctrine of proprietary estoppel. The headnote in the Weekly Law Reports summarises the facts succinctly. The plaintiff spent his working life as a farm manager for and as a friend of the first defendant, a landowner of substantial means, who made repeated promises and assurance over many years, usually on special family occasions, that the plaintiff would succeed to his farming business including the farmhouse in which the plaintiff and his family had lived for twenty five years. After 1992 relations between the plaintiff and the first defendant deteriorated rapidly. In 1995 the plaintiff was dismissed and the first defendant made lifetime dispositions to the second defendant, in whose favour he also altered his will, making no provision for the plaintiff. The plaintiff sought equitable relief based on proprietary estoppel. The Court of Appeal held on the facts that the defendants' conduct had given rise to an estoppel, and the minimum equity to do justice to the plaintiff was for the first defendant to convey to him the freehold of the farmhouse together with a sufficient sum of money to compensate for his exclusion from the rest of the farming business.

27. Delany (at p. 760), having referred to the comment in the speech of Lord Walker in *Thorner v. Major* [2009] 1 WLR 776 (at para. 29), that most scholars agree that the doctrine of proprietary estoppel is based on three main elements, being a representation or assurance made to the claimant, reliance on it by the claimant, and detriment to the claimant in consequence of his (reasonable) reliance, quotes the following passage from the judgment of Robert Walker L.J. in *Gillett v. Holt* (at p. 829), which was relied on by counsel for the plaintiff:

> ". . . 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 the court must look at the matter in the

round."

Later in his judgment (at p. 831) Robert Walker L.J. considered whether it is of any significance that a promise or assurance is linked to the making of a will and he stated:

> "But the inherent revocability of testamentary dispositions . . . is irrelevant to a promise or assurance that 'all this will be yours' . . .. Even when the promise or assurance is in terms linked to the making of a will . . . the circumstances may make clear that the assurance is more than a mere statement of present (revocable) intention, and is tantamount to a promise."

An unusual factual component of this case, however, is that there was an understanding between the Deceased and the plaintiff that the Deceased might change his will but there was also an understanding that, in that event, the Deceased would inform the plaintiff.

Coleman v. Mullen
28. The facts underlying that appeal from a Circuit Court to the High Court were that the plaintiff had been a carer for a Ms. O'Keeffe with whom she was a close friend, and voluntarily provided extensive personal assistance to Ms. O'Keeffe for about 20 hours a week from 1993 to 1998. No promise was made by Ms. O'Keeffe that she would be remunerated for her work, nor was there a contract between the plaintiff and Ms. O'Keeffe to that effect. Following the death of Ms. O'Keeffe, the plaintiff took a *quantum meruit* action against the defendant in his capacity as executor of the estate in respect of the services which she applied to Ms. O'Keeffe during her lifetime. It was held by the High Court (Hogan J.) that no action in *quantum meruit* or in unjust enrichment lay in the circumstances of the case where the plaintiff had voluntarily acted as a good friend to an elderly neighbour and there had been no understanding between them that the plaintiff was entitled to be rewarded for her services. Hogan J. (at para. 15) referred to *McCarron v. McCarron*, stating that Murphy J. assumed that:

> ". . .'humanitarian services provided on a purely neighbourly or charitable basis for some person in need' fell outside the scope of law of contract."

Hogan J. concluded (at para. 20) that, in the absence of any intention to create legal relations, the plaintiff was not entitled to maintain a claim for *quantum meruit* against the estate of Ms. O'Keeffe.

Application of the law to the facts: the claim in contract
29. The basis of the plaintiff's claim for specific performance has to be that there was an agreement between the plaintiff and the Deceased that, irrespective of what might happen between August 1991 and the death of the Deceased, on the death of the Deceased the plaintiff would become entitled to his farm and the livestock and machinery on the farm at the time. It is clear on the evidence that there was no such agreement. The evidence of the plaintiff was that the Deceased told him that, if he changed his mind, obviously meaning that he varied or revoked the August 1991 Will, he would let the plaintiff know. That evidence is wholly consistent with what the Deceased told Ms. Davis on 12th August, 1991. Accordingly, from the outset it was the understanding of both parties that the Deceased could revoke the will in favour of the plaintiff and dispose of the farm, livestock and machinery to somebody other than the plaintiff. In fact, that is what has happened. As what has happened accords with the understanding of the parties, in my view, the plaintiff has made out no case in contract for an order for specific performance which would give him an entitlement to the farm and the livestock and machinery.

30. Following the decision of the Court (Hogan J.) in *Coleman v. Mullen*, in determining whether the plaintiff is entitled to be compensated on a *quantum meruit* basis for the services he provided to the Deceased between 1991 and 2000, the test to be applied is whether there is evidence of intention on the part of both parties to create legal relations as to the entitlement of the plaintiff to reasonable remuneration for services actually rendered to the Deceased, in the event that the Deceased revoked the August 1991 Will. In my view, it is reasonable to conclude that there was such an intention on the totality of the evidence.

31. It is clear that both parties understood that the plaintiff was prepared to provide services to the Deceased because of the promise that he would get the farm on the death of the Deceased. It is also clear that the Deceased recognised that the plaintiff should be informed, if the Deceased varied or revoked the August 1991 Will, so that the plaintiff was not ultimately going to be the beneficiary of the farm. One aspect of that commitment of disclosure on the part of the Deceased obviously was that the Deceased considered that, in that event, the plaintiff would no longer provide services to him without remuneration. As it happened, the plaintiff had ceased to provide services to the Deceased about three years before the August 1991 Will was revoked and, perhaps, that is why the Deceased did not tell him that he had revoked the August 1991 Will in 2003. However, I think it is reasonable to infer that there was another implication of the commitment of the Deceased that, if he was not going to fulfil his end of the bargain, the plaintiff would be told. That implication was that, to the extent that the plaintiff had already fulfilled his end of the bargain, he would be reasonably compensated for the services he had already rendered. It is clear on the evidence that the plaintiff, unlike the plaintiff in *Coleman v. Mullen*, was not merely motivated by good neighbourliness and charitable instincts. He expected to be remunerated in the fullness of time for his labours and he made that clear in cross-examination when he stated that, if the Deceased had told him that he had changed his mind in 2003, he would have sent him a "bill".

32. Moreover, the evidence indicates that the Deceased did not consider that he was the recipient of good neighbourliness or charity. When he made the August 2003 Will, he clearly recognised that he had some obligation to compensate the plaintiff for the services he had provided over the years because in making provision for payment of €5,000 to the plaintiff he specifically stated that it was "for assistance rendered" to him some years previously. Notwithstanding that the probability is that it was the fact that the plaintiff ceased to help the Deceased to run the farm from around the year 2000 which precipitated the revocation of the August 1991 Will, I have come to the conclusion that, as a matter of law, the plaintiff is entitled, in accordance with *quantum meruit* principles to reasonable remuneration for the services he actually provided to the Deceased.

33. Notwithstanding that finding, I propose to consider the application of the doctrine of proprietary estoppel which, in terms of remedies available, is more flexible than assessing and awarding damages on a *quantum meruit* basis.

Proprietary estoppel
34. In relation to the three main elements which form the basis of the doctrine of proprietary estoppel in the context of the facts of this case, the position is as follows:

> (a) In this case, unlike many cases, there was an express representation or assurance by the Deceased to the plaintiff that, if the plaintiff assisted the Deceased in running the farm, the Deceased would leave the farm to the plaintiff in his will. Not only that, but, in accordance with that representation, the Deceased made the August 1991 Will to fulfil that assurance and he told the plaintiff that he had made it. Further, he told the plaintiff that, if he were to change his mind,

he would tell the plaintiff. It was reasonable for the plaintiff to assume that, if the Deceased did change his mind, he would recognise that the plaintiff should be rewarded for the assistance given by him to the Deceased up to that time. Indeed, in view of the provision in the amount of €5,000 made by the Deceased for the plaintiff in the August 2003 Will, it is reasonable to assume that the Deceased considered that it was fair and just that the plaintiff should be rewarded for the services he had rendered post-1991.

(b) Between 1991 and 2000 the plaintiff acted in reliance on the assurances given to him by the Deceased both before and after August 1991, in particular, the assurance he gave him on the day following the making of the August 1991 Will and the confirmation on the way home from the seminar on early retirement schemes.

(c) The plaintiff did suffer a detriment in consequence of his reasonable reliance on the Deceased's assurances and such detriment was of the type envisaged by Murphy J. in *McCarron v. McCarron*, in that the plaintiff suffered a loss or detriment by providing his own labours and services to assist the Deceased in running the farm without any remuneration for his endeavours. As Murphy J. pointed out, that type of detriment should qualify for recognition in equity and, in my view, in this case it does.

Therefore, the three main elements of the doctrine of proprietary estoppel are present in the plaintiff's claim.

35. Looking at the facts in the round, I am satisfied that it would be unconscionable if the plaintiff was not recompensed for the labours and services he provided to the Deceased over the period from 1991 to 2000. Further, it would be unconscionable if the defendants acquired the Deceased's farm under the September 2004 Will free from any entitlement of the plaintiff to be recompensed. Therefore, in my view, equity requires that the plaintiff be reasonably remunerated for the labours and services which he gave the Deceased and that he be given some form of security in relation thereto over the lands registered on Folio 173F in order to ensure that the amount which the Court finds due to him is discharged. The suggestion in the judgment of Murphy J. in *McCarron v. McCarron* that a charge or lien on the lands for a sum equivalent to reasonable remuneration for services rendered might constitute adequate compensation, in my view, is particularly suitable to the situation here and meets the equity of this case. I propose adopting that course here. It remains to determine the measure of reasonable remuneration.

Measure of reasonable remuneration

36. Except to question whether the plaintiff had provided the level of assistance and services to the Deceased which he claimed to have provided, in particular, after 1997, and also to question whether, as the plaintiff contended, the Deceased paid him nothing over the years, the defendants did not challenge the assessment of the plaintiff's claim based on *quantum meruit* as pursued at the hearing. In particular, the defendants did not adduce any evidence as to loss which contradicted the loss assessment which was put before the Court in the report and oral evidence of Mr. Fitzpatrick. Mr. Fitzpatrick pointed out that his assessment did not factor in any uplift for the plaintiff working late hours on the farm or in relation to holidays; rather he had pared down his assessment to cover minimum hours. Overall, I am satisfied that Mr. Fitzpatrick's assessment is both reasonable and fair.

37. At the end of the evidence of Mr. Fitzpatrick, who was the last witness called on behalf of the plaintiff, counsel for the plaintiff informed the Court that they were seeking the sum of €74,000 on a *quantum meruit* basis together with interest. I assume that that was a reference to interest on the sum awarded from the date of judgment. There was no discussion at the hearing of an entitlement of the plaintiff either to contractual interest or pre-judgment interest pursuant to s. 22 of the Courts Act 1981. Clearly no basis for awarding the plaintiff interest on the basis that the estate of the Deceased is contractually liable for interest has been made out. As regards pre-judgment interest under s. 22 of the Courts Act 1981, I am of the view that this is not a case in which the Court should exercise its discretion to award pre-judgment interest. The defendants did not create the situation which has arisen in this case; literally they inherited it. Nothing emerged at the hearing on the basis of which it would be appropriate for the Court to make an order under s. 22.

Order

38. There will be judgment in favour of the plaintiff against the defendants as personal representatives of the Deceased in the sum of €74,000. That judgment will carry interest at the Court rate, 8%, from the date of this judgment in the ordinary way.

39. There will also be an order that payment of the said sum of €74,000 together with interest thereon at the statutory rate of 8% to the plaintiff shall be charged on the lands registered on Folio 173F of the Register of Freeholders, County Cavan until satisfaction of the said sum and interest. Finally, there will be an order directing the Property Registration Authority to register the charge in favour of the plaintiff on Folio 173F and to register the plaintiff as the owner of the charge.