

## Court rules on equitable relief claims for joint venture agreements (Farrar v Miller)

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**Property analysis:** The Court of Appeal has ruled that a case can proceed to trial where a businessman alleges that he was wrongfully excluded from a later deal which saw a property development site sold for £5m, with him receiving nothing. It ruled that the judge below was wrong to strike out claims for breach of a constructive trust, breach of fiduciary duty and for a proprietary estoppel. Barrister Marie-Claire Bleasdale of Radcliffe Chambers, Lincoln's Inn, comments on what lessons can be learned from this case and considers the wider implications for these types of cases.

*Farrar v Miller* [\[2018\] EWCA Civ 172](#)

### What are the practical implications of this case?

Many thought that the decision in *Cobbe v Yeoman's Row* [\[2008\] UKHL 55](#), [\[2008\] 4 All ER 713](#), would effectively put an end to constructive trust or proprietary estoppel claims in a commercial context. This was certainly the view of Mr Miller's legal team because they argued that Mr Farrar's claims had no reasonable prospect of success. However, the Court of Appeal did not agree that the legal issues were so clear cut.

Mr Farrar's contractual claims were struck out because he was relying on an oral agreement which was not enforceable due to [section 2](#) of the Law of Property (Miscellaneous Provisions) Act 1989 ([LP\(MP\)A 1989](#)). He was, however, given permission to amend to bring these three equitable claims, namely that:

- a *Pallant v Morgan* [\[1952\] 2 All ER 951](#) constructive trust had arisen
- there was a proprietary estoppel, and/or
- Mr Miller owed him fiduciary duties to act in good faith, consistently with the purpose and objectives of their joint venture and not to prefer his personal interests over Mr Farrar's and so held the profits from the sale of land on a constructive trust

This case is a reminder to:

- consider whether [LP\(MP\)A 1989, s 2](#), applies to a joint venture agreement
- plead any equitable remedies which get over the difficulties caused by [LP\(MP\)A 1989, s 2](#), and
- review all defences at an early stage of proceedings and, if necessary, apply to amend the pleadings as early as possible

### What was the background?

Mr Farrar and Mr Miller were property developers and through a company called Saxon indirectly owned a piece of land (Long Stratton) in equal shares. An oral agreement was reached that Messrs Farrar and Miller, along with Mr Chalcraft and Mr Brunswill, would apply for planning permission to build residential properties on Long Stratton. Under that agreement Long Stratton would be transferred to a new joint venture company and the net profits when Long Stratton was sold would be divided. The joint venture agreement provided that Messrs Farrar and Miller would each receive 28.5% of the profits, with Mr Brunswill having 10% and Mr Chalcraft 33%. Throughout their joint dealings, Mr Farrar had trusted Mr Miller to deal with all corporate matters. Mr Farrar left Mr Miller to arrange the setting up of the joint venture entity and the transfer of Long Stratton to it.

In 2008 Saxon became insolvent, but another company, Artillery Mansions Ltd, which was also indirectly owned in equal shares by Messrs Farrar and Miller, bought Long Stratton from the administrators. What then followed were sales in 2009 and 2010 to companies owned by Messrs Miller, Chalcraft and Brunswill. Mr Farrar did not have any interest in either of these companies. He claimed that these sales had been arranged and orchestrated by Mr Miller and he had not known about or approved the sales. Planning permission was obtained in March 2013, following which Long Stratton was sold for in excess of £5m. Messrs Miller, Chalcraft and Brunswill kept all the profits and Mr Farrar received nothing.

## What did the court decide? Why did the judge think there was merit in the legal arguments of the claimant and appellant?

This was a review of a case management decision, so the Court of Appeal was only considering whether Farrar's claims were arguable or not. However, Miller argued that Farrar was unable to establish key elements of each legal claim. Miller made the following points relying on Lord Scott's dicta from *Cobbe*:

- the joint venture agreement was made after the parties had already acquired Long Stratton so a *Pallant v Morgan* equity could not arise
- [LP\(MP\)A 1989, s 2](#), was fatal to the proprietary estoppel claim

Miller's other three arguments were that:

- both the constructive trust and proprietary estoppel remedies were unsustainable because the joint venture agreement was incomplete and no detriment had been suffered
- Miller was a director and Farrar was a shareholder. Farrar had a derivative claim as a shareholder so Miller didn't owe Farrar any additional fiduciary duties
- the claim for breach of fiduciary duty was time barred by [section 21\(3\)](#) of the Limitation Act 1980

The Court of Appeal rejected Miller's suggestion that any of these arguments were conclusive. It made these observations on some of the relevant legal principles:

- while a *Pallant v Morgan* constructive trust typically arises in cases where the agreement is reached before the property is acquired, it can arise in appropriate cases where a joint venture agreement was made after property had been purchased. Where a person has assumed the duties of a trustee but later deals with the property in breach of those duties, a constructive trust can arise. Lord Justice Kitchin observed that Lord Scott's dicta in *Cobbe* was to be seen in the context of the circumstances of that case and did not set out a general rule
- the relevant acquisition was the intended acquisition by the joint venture entity—so Farrar's claim was a typical *Pallant v Morgan* claim
- there were strong arguments for saying [LP\(MP\)A 1989, s 2](#), did not apply to proprietary estoppel claims. However, these were difficult arguments which should be determined following trial in the light of the findings of fact and after full argument
- although the joint venture agreement was incomplete (because the amount of a payment to Saxon had not been finalised) that was not fatal to the *Pallant v Morgan* claim because that issue was not a critical part of the deal. It is not necessary to establish that the agreement is sufficiently certain to be contractually enforceable. Nor was a certain and concluded agreement necessary for a proprietary estoppel to arise. What is required is that the claimant was induced encouraged or allowed to believe that he would acquire an interest in land—and the interest has to be 'clear enough' in the circumstances
- it was wrong to say that Farrar had suffered no detriment, or that any promise to him had been fulfilled, because the property had been transferred to Artillery. That was not the relevant transaction. The relevant assurance was that Farrar would have an indirect interest in the profits following development and sale. The detriment was suffered when the property was transferred to companies in which Farrar had no interest
- finally, the question of what, if any, fiduciary duties are owed is highly fact-sensitive. It depends on the circumstances of the joint venturer's relationship, whether a relationship of trust and confidence has arisen, or whether equity will recognise a legitimate expectation that one will not use his position in a way adverse to the interests of the other

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