[2005–06 Gib LR 257]

GONZALES v. A. COLLADO and M.A. COLLADO

SUPREME COURT (Schofield, C.J.): May 25th, 2006

Estoppel—promissory estoppel—assurance to be specific and unqualified, leading to detrimental reliance on it by other party—detriment to be interpreted broadly, including, e.g., selling own flat in reliance on supposed offer of permanent accommodation and thereby taking oneself out of local housing market

The claimant sought an order evicting the defendants from her Government-owned flat.

The claimant agreed that the defendants (her son-in-law and daughter) should come to live with her after her husband died. They agreed because they wished to give her companionship at a difficult time and to do so at least temporarily and possibly permanently. They sold their own flat at a time when the market was low, paid off outstanding debts, took a holiday and placed the balance of the sale funds on deposit. Those funds were not large enough to allow them to buy another property and the first defendant's income was low.

The claimant obtained the Housing Department's consent to include the defendants on the tenancy for "medical" reasons. Relations between them slowly deteriorated and the claimant ultimately applied to exclude the defendants from the tenancy on the basis of "ill-treatment and psychological stress." This removed their legal entitlement to stay in the flat. She transferred the utility accounts back into her own name and commenced the present proceedings to evict the defendants.

The defendants submitted that the claimant was estopped from evicting them as she had in fact assured them that they could live in the flat with her permanently and, acting on this assurance, they had sold their own flat and thereby acted to their detriment.

The claimant in reply denied that she had offered the defendants permanent residence but claimed that she had made it clear that their moving in was only a temporary arrangement. She asserted that by registering them as tenants she was only "doing things properly," *i.e.* ensuring that they were not there unlawfully and not jeopardizing her own tenancy rights. She claimed that she was unaware that including them in the tenancy would give them an automatic right to it on her death. The evidence of her son was to the effect that the defendants were happy to move, as their own flat was in poor repair, and living with the claimant was intended to be only until they found other accommodation;

they had agreed that when they did they would find an extra room for the claimant.

Held, finding for the claimant:

The claimant was not estopped from evicting the defendants, as she had not given them assurances about their permanent residence in her flat on which a promissory estoppel could be based. Interpreting "detriment" broadly, as the court was obliged to do, the defendants had certainly suffered detriment in selling their own flat at a low point in the market and moving in with the claimant, as they had taken themselves out of the housing market and now had insufficient capital or income to re-enter it if they were evicted. Nonetheless, they had acted without the specific and unqualified assurances from the claimant that would be necessary to found promissory estoppel—the evidence suggesting no more than that they had been encouraged to make a temporary move to give the claimant the companionship she badly needed, to give them cheap, comfortable accommodation in the short term, with the hope that it might develop into permanent residence (paras. 18–20).

Cases cited:

(1) *Gillett* v. *Holt*, [2001] 1 Ch. 210; [2000] 2 All E.R. 289; [2000] 2 FLR 266, *dicta* of Robert Walker, L.J. applied.

(2) *Hardwick* v. *Johnson*, [1978] 1 W.L.R. 683; [1978] 2 All E.R. 935, *dicta* of Lord Denning, M.R. considered.

D. Hughes for the claimant;
Ms. J. Evans for the defendants.

1 **SCHOFIELD, C.J.:** Mrs. Maria Gonzalez is an elderly widow. She had lived in a flat at 7 Alert House, Varyl Begg Estate, with her husband and family for well over 20 years when her husband died in 1999. 7 Alert House is accommodation rented from the Government and Mrs. Gonzalez has been the sole tenant since her husband died.

2 Mrs. Gonzalez has two children, both of whom are now married with families of their own. Her son, Rafael, and his family lived with Mrs. Gonzalez at the time of her husband's death, but they moved out of the flat to accommodation of their own the following year. Mrs. Gonzalez's other child is the second defendant, Maria Angeles Collado. Mrs. Collado and her husband, the first defendant, Anthony Collado, owned a flat at Lynch's Lane, Gibraltar, which Mr. Collado had purchased from his father for £18,000, some time in the 1990s, it seems.

3 When Rafael left the flat, Mrs. Gonzalez was extremely lonely and would spend alternate fortnights with her two children. On May 3rd, 2002, Mr. and Mrs. Collado sold their flat in Lynch's Lane for £140,000 and moved in with Mrs. Gonzalez with their two sons, now aged 15 and 12.

They discharged their mortgage, paid off some outstanding debts, had a good holiday and invested the remainder of the sale price, £70,000, in a fixed deposit which does not mature until some time next year. On June 13th, 2002, Mrs. Gonzalez filed an application with the Government Housing Department that the Collado family be included on the tenancy, the reason given for the application being "Medical." So the Collado family have been living with Mrs. Gonzalez since mid-2002 with the permission of the landlord, the Government.

4 Matters proceeded smoothly for about a year. Mr. Collado had the electricity and water accounts put into his name and paid all the utilities bills and the rent. It is the case of Mr. and Mrs. Collado that they also paid the food bills, but Mrs. Gonzalez seems to say that she paid for, or contributed to, the food. Be that as it may, there is no suggestion that the Collado family were living off Mrs. Gonzalez. That is, until relations between Mrs. Gonzalez and the Collado family deteriorated. All parties are agreed that relations started to deteriorate in 2003 and have reached an extent that they now live in a state of constant tension.

5 On September 1st last year, Mrs. Gonzalez filed with the Housing Department an application to exclude Mr. and Mrs. Collado and their children from the tenancy. The reason Mrs. Gonzalez gave on the relevant form was: "Suffering continuous ill-treatment and psychological stress by daughter and son-in-law." It is agreed by the parties that the effect of the filing of this document is that the Collado family are now residing in the flat unlawfully. In October, Mrs. Gonzalez arranged for the electricity and water accounts to be put back into her name and instructed all the utilities authorities and the Housing Department not to accept any money from Mr. Collado. Although Mrs. Gonzalez has complained in her witness statements that Mr. and Mrs. Collado no longer contribute to the utilities bills and the rent, it would seem that this is as a result of her own actions in instructing the relevant authorities not to accept money from them, and Mr. and Mrs. Collado have offered to tender payment to Mrs. Gonzalez's solicitor. It seems that Mrs. Gonzalez does all her own cooking and no longer shares meals with her daughter and son-in-law and their children.

6 Mrs. Gonzalez now seeks an order evicting Mr. and Mrs. Collado from the flat. Initially, Mr. and Mrs. Collado intended to challenge the application on the basis that in the circumstances a co-tenancy was in existence, but they have abandoned that defence. They say, and this is the narrow issue I am called upon to determine, that Mrs. Gonzalez held out to them that they could permanently reside in the flat and that in acting upon her assurance that the arrangement was to be a permanent one they sold their house and have acted to their detriment. They claim that it would be unconscionable for Mrs. Gonzalez to evict them and she is estopped from so doing by her conduct.

7 I heard evidence from Mrs. Gonzalez, her son, Rafael, and Mr. and Mrs. Collado. Rafael supports his mother, and, as is the case in such disputes, both sides blame the other for the breakdown of relations between them. I do not intend to attempt to apportion blame for the unhappy state of affairs in the household as, to my mind, it is unnecessary for me to do so. What is clear is that tensions are such between the parties that life in the flat must be at least extremely unpleasant and probably at times unbearable. Mrs. Gonzalez is unwell, having had two bouts of cancer, and I am satisfied the from medical evidence I have heard that the constant stress is doing her fragile health no good at all. The other side of the coin is that Mr. and Mrs. Collado are living in the same household as an elderly lady who is probably very difficult to live with. Mr. Collado is the only breadwinner and earns a little more than £1,000 per month. Mr. and Mrs. Collado are now out of the housing market and with a deposit of only £70,000 will find it difficult to buy a flat of their own in Gibraltar. On £1,000 per month income they could not afford to rent a decent flat. A move to Spain, where housing is cheaper, would disrupt their sons' education and, if they chose to send them from Spain to Gibraltar to continue their education, there would be serious cost implications. In short, whatever decision I make has massive implications for the party against whom I make it.

8 It is agreed by the parties, however, that the decision I have to make is on a narrow issue. Do the circumstances of this case give rise to an estoppel? This involves a decision on whether Mrs. Gonzalez held out to Mr. and Mrs. Collado that they were to live permanently in the flat. On the one hand Mrs. Gonzalez says that there was no such assurance and that Mr. and Mrs. Collado are cynically choosing to stay in the flat so that they can take it over when she dies. On the other hand Mr. and Mrs. Collado say that it was Mrs. Gonzalez who persuaded them to move in with her and that it was meant to be on a permanent basis, otherwise they would not have sold their house.

9 Ms. Evans, for the defendants, has referred me to two main authorities in support of her argument that Mrs. Gonzalez is estopped from denying them a roof over their heads. The first is *Hardwick* v. *Johnson* (2), in which the plaintiff had bought a matrimonial home for her son and his first wife but had faced complications when the marriage broke down. When her son became engaged to be married again, she bought a house for the engaged couple in her own name under a loose family arrangement that they should pay her £28 per month. After the son's marriage only a few payments were made but the plaintiff did not complain or demand payment of the unpaid moneys. After the marriage had lasted less than two years, the second marriage began to break down when the son took up with another woman soon after his wife became pregnant. The son left the house and the plaintiff took proceedings in the

county court for possession of the house as against her son and his wife, alleging, *inter alia*, an oral agreement for a licence granted to her son only in payment of £7 per week, or alternatively a weekly tenancy which, she claimed, had been terminated by notice to quit served on the son. She also claimed arrears of rent and mesne profits. The judge dismissed the claim for possession on the ground that the mother had granted a joint licence to her son and his wife on payment by them of £28 per month and the wife and her baby were entitled to remain in occupation as a joint licensee on payment of £7 per week and some arrears of rent. In dismissing the appeal, the Court of Appeal held that where the house had been occupied under an informal family arrangement at a time when none of the parties had contemplated what was to happen if the marriage broke up, the court itself would spell out the resulting legal relationship by imputing to the parties a common intention which in fact they never formed. The Court of Appeal imputed to the parties a joint licence in terms laid down by the judge at first instance. Lord Denning, M.R. had this to say ([1978] 1 W.L.R. at 688):

> "So we have to consider once more the law about family arrangements. In the well-known case of *Balfour v Balfour* [1919] 2 K.B. 571 at 579, Atkin L.J. said that family arrangements made between husband and wife 'are not contracts . . . because the parties did not intend that they should be attended by legal consequences'. Similarly, family arrangements between parent and child are often not contracts which bind them, see *Jones v Padavatton* [1969] 1 W.L.R. 328. Nevertheless these family arrangements do have legal consequences: and, time and time again, the courts are called upon to determine what is the true legal relationship resulting from them. This is especially the case where one of the family occupies a house or uses furniture which is afterwards claimed by another member of the family: or when one pays money to another and afterwards says it was a loan and the other says it was a gift, and so forth. In most of these cases the question cannot be solved by looking to the intention of the parties, because the situation which arises is one which they never envisaged, and for which they made no provision. So many things are undecided, undiscussed, and unprovided for that the task of the courts is to fill in the blanks. The court has to look at all the circumstances and spell out the legal relationship. The court will pronounce in favour of a tenancy or a licence, a loan or a gift, or a trust, according to which of these legal relationships is most fitting in the situation which has arisen; and will find the terms of that relationship according to what reason and justice require. In the words of Lord Diplock in *Pettitt v Pettitt* [1970] A.C. 777 at 823:
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> '. . . the court imputes to the parties a common intention which in fact they never formed and it does so by forming its own

> opinion as to what would have been the common intention of reasonable men as to the effect [of the unforeseen event if it] had been present to their minds.'"

10 The second case relied on by Ms. Evans is *Gillett* v. *Holt* (1) ([2000] 2 FLR 266), in which the respondent was a rich farmer who befriended the appellant when the latter was 12 years old. The appellant became the respondent's protégé and was induced to leave school at 15 to live and work on the respondent's farm. Over the years, and the close relations between the parties continued for about 40 years, the appellant was given considerable responsibility and proved to be an energetic, skilful and innovative farmer. After the appellant's marriage, he and his wife, and later their two children, lived in a farmhouse owned by the respondent's company and they became the respondent's surrogate family. It became understood, and was frequently and publicly asserted by the respondent, that the appellant would inherit the farming business on the respondent's death. A will was drawn up confirming that intention. When the respondent met a young trainee solicitor and took him to live with him, the relations between the parties quickly deteriorated and the appellant was summarily dismissed by the respondent's company and a new will was drawn up with no bequests to the appellant or his family and a previous provision allowing them to stay in the farmhouse disappeared. The appellant brought an action claiming equitable relief based on proprietary estoppel. At first instance, the judge denied the claim finding that there had been nothing that could be construed as an irrevocable promise that the appellant and his family would inherit regardless of any change of circumstances. He also said that the claim would fail in any event because the appellant had not proved himself to have suffered detriment.

11 The judge's decision was overturned on appeal to the Court of Appeal. Robert Walker, L.J. had this to say ([2001] 1 Ch. at 225):

> "This judgment considers the relevant principles of law, and the judge's application of them to the facts which he found, in much the same order as the appellant's notice of appeal and skeleton argument. But although the judgment is, for convenience, divided into several sections with headings which give a rough indication of the subject matter, 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 the court must look at the matter in the round."

12 The Court of Appeal found on the facts of the case that the respondent's assurances, repeated over a long period, were completely unambiguous and were capable of forming the foundation of an enforceable claim based on proprietary estoppel; that the trial judge had exaggerated the degree to which a promise must be expressly made irrevocable if it was to found an estoppel; and that, on the facts, it was the appellant's detrimental reliance on the promise that made it irrevocable. On the question of detriment, Robert Walker, L.J. had this to say (*ibid.*, at 232):

> "The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances."

13 In the instant case, Mr. Hughes, quite rightly, concedes that Mr. and Mrs. Collado have suffered detriment in that, by moving into the flat, they have taken themselves out of the housing market and put their future housing in a precarious state should they have to move out of the flat. The real question is: Do the circumstances, taken in the round, give rise to a situation where Mrs. Gonzalez is estopped from standing on her legal right to have them removed from the flat?

14 Let me first look at what assurances, if any, were given by Mrs. Gonzalez about the permanence of the Collado family's move to the flat. Mrs. Gonzalez's evidence is that they were only going to move in for a short while and that the move was never meant to be permanent. She registered the Collado family with the Housing Department because she wanted to do things properly and that she did not know that by so registering them they would have a right to take over the tenancy on her death. On this latter point, I have serious doubts about Mrs. Gonzalez's veracity. It is well known within Gibraltar that a Government tenancy is passed on to the children living in the premises at the time of the tenant's death. Indeed, this right to "inherit" is a valuable commodity in Gibraltar and has been the subject of a number of actions in this court. Be that as it may, it is quite possible that Mrs. Gonzalez, whilst knowing the consequences of registration, did register the Collado family when she did, so as to avoid their being unlawful occupants and putting her own tenancy in jeopardy. It is significant that Rafael Gonzalez works in the

Housing Department and would, no doubt, be giving advice on these issues.

15 Mr. and Mrs. Collado say that it was at the instigation of Mrs. Gonzalez, who did not want to live alone, that they moved; that they would not have done so unless they were assured that it was a permanent arrangement. Their evidence is that the flat in Lynch's Lane is probably worth today twice as much as they sold it for, and I do not think that this evidence is substantially disputed. Mr. Collado testified that the thought of inheriting the tenancy of the flat never crossed his mind, but when pressed on that piece of unlikely evidence quickly retracted it by saying that to stay in the flat would have been their intention and that they thought their future was secure.

16 The evidence of Rafael Gonzalez contradicts the evidence of Mr. and Mrs. Collado. The relevant portion of his witness statement reads:

> "7. Towards the end of 2002, Mr. and Mrs. Collado were selling their flat in Lynch's Lane. They told me the reasons they were selling the house [were] because it was cheaper to sell it than to fix it, as it was in quite a poor state. Shortly before they sold the flat, they did spend some money on a face-lift and I helped out in clearing the house. Whilst they were clearing out their flat they were living in La Linea in Blanca Azul, 7 Primera Face, Calle Calderon de la Barca.
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> 8. During this time, my mother discussed the possibility of Mrs. Collado and her family moving in to my mother's home for a time. My mother agreed to this as they did not have a home and she was told that they were doing so to keep her company. They also told me that the main reason they were moving in was to keep my mother company. My mother agreed they could stay in her home until they bought a new house."

17 When examined on this statement, Mr. Gonzalez said that when the Collado family moved into the flat there was no discussion as to duration. It was until they found other accommodation. He said he remembers it being said that when the Collado family got their own place, they would ensure that there was an extra room for Mrs. Gonzalez to stay in.

18 From all the evidence, I conclude that there was never a specific assurance by Mrs. Gonzalez that the Collado family's move to the flat was to be a permanent one. Most certainly we are not in a situation such as in *Gillett* (1) where assurances were given and repeated publicly over a number of years. It is more likely that the move was considered to be possibly a temporary move but that all the parties hoped that it would turn into a permanent arrangement. Such a permanent arrangement would give Mrs. Gonzalez the companionship she so desperately sought and would

provide Mr. and Mrs. Collado and their children with cheap, comfortable accommodation and would secure their future housing needs. There was no specific assurance, nor do I think it right, having regard to all the circumstances, for me to impute a common intention by the parties that the situation should be permanent.

19 Whilst it cannot be doubted that in today's housing market Mr. and Mrs. Collado have suffered a considerable detriment by moving out of that market when there has been a substantial increase in house prices over the past four years, it must not be forgotten that relations between the parties started to deteriorate only about a year after their move in 2003. The housing market at that time was on the upward move but not as difficult as it is now. Furthermore, whilst we look at the detriment as of today, the position of Mr. and Mrs. Collado at the time of their move in 2002 cannot be ignored. Their flat in Lynch's Lane was not in good repair, and indeed they had to take a second mortgage to pay for repairs to the roof. This evidence supports the evidence of Rafael Gonzalez. The equity in the flat in Lynch's Lane was somewhere in the region of £120,000 and yet they have only £70,000 left after taking a substantial holiday and paying off some debts. This further supports the evidence of Rafael Gonzalez that the move from Lynch's Lane had a financial element for Mr. and Mrs. Collado, and was not purely as a result of their desire to give companionship to Mrs. Gonzalez.

20 The upshot is that I find that Mrs. Gonzalez did not make specific assurances to Mr. and Mrs. Collado that their occupation of her flat would be permanent. Looking at the matter in the round, whilst I have sympathy for the situation that Mr. and Mrs. Collado find themselves in, in my judgment the circumstances are not such as to estop Mrs. Gonzalez from insisting that they vacate the flat. Accordingly, Mrs. Gonzalez is entitled to the orders she seeks, and I shall discuss with counsel the form those orders should take.

Judgment for the claimant.