'I love you … I want you to have a home here with me': Proving reliance in proprietary estoppel

Rachel Mansted reports on *Sidhu v Van Dyke* [2014] HCA 19 (Court of Appeal *Van Dyke v Sidhu* (2013) 301 ALR 769; Supreme Court *Van Dyke v Sidhu* [2012] NSWSC 118).

A scenario which would not have been out of place on the Jerry Springer Show provided rich material for the High Court in a recent judgment on proprietary estoppel.

Ms Van Dyke lived with her son and husband in Oaks Cottage, on part of a large rural property, Burra Station. Mr Sidhu and his wife lived in the main house on the property, and owned Burra Station as joint tenants. Mr Sidhu's wife and Ms Van Dyke's husband were brother and sister. When Ms Van Dkye commenced an intimate relationship with Mr Sidhu, her husband soon left the property and after separation, a divorce was finalised. Ms Van Dyke and Mr Sidhu continued their relationship between 1997 and 2006. During this time, Mr Sidhu's wife remained on the property, and Ms Van Dyke continued to live in Oaks Cottage with her son. Mr Sidhu, on several occasions throughout the relevant period, made clear statements (some in writing) to Ms Van Dyke to the effect that he wished her to have Oaks Cottage. He even promised to rebuild the cottage and gift it to her, after the cottage accidentally burned down in early 2006. In mid-2006, the relationship between Mr Sidhu and Ms Van Dyke came to an end.

During the time she lived in Oaks Cottage, considering that it would one day be transferred to her, Ms Van Dyke did not seek full time employment, and carried out significant repair and maintenance work on the cottage and other parts of the rural property for no remuneration. She did not seek a property settlement in the divorce from her husband, on the strength of Mr Sidhu's assurance that she did not need a settlement, because Oaks Cottage was now hers.

All five members of the High Court decided that Ms Van Dyke was entitled to equitable compensation for Mr Sidhu's failure to transfer title to the Oaks Cottage. The two issues in the case were whether Ms Van Dyke had sufficiently proved the element of detrimental reliance required to make out an estoppel; and if so, what was the appropriate basis for equitable compensation in circumstances where the property was not Mr Sidhu's to give.

The courts below – a portable palm tree

Justice Ward at first instance held that reliance was not made out. Her Honour held that it was 'entirely possible that [Ms Van Dyke] would have remained living on the property, carrying out tasks on the property (even if not to the extent of the work she in fact carried out) and working part-time, whether or not the promises had been made.'[1] There was therefore no detriment, given Ms Van Dyke was likely to have done all these things regardless of the promises made by Mr Sidhu. Ward J quoted from an English decision where it was bluntly opined that, if the court had a jurisdiction to hold people to mere moral obligations, 'one might as well forget the law of contract and judge every civil dispute with a portable palm tree.'[2]

Ward J's decision was reversed by the Court of Appeal, on the basis that the promises alleged by Ms Van Dyke were of a nature to create a presumption of reliance, being 'commonsense and rebuttable presumption of fact that may arise from the natural tendency of a promise'.[3] Barrett JA (with whom Basten JA and Tobias AJA agreed) said that, 'Where inducement by the promise may be inferred from the claimant's conduct, as is the case here, the onus or burden of proof shifts to the defendant to establish that the claimant did not rely on the promise'.[4] Mr Sidhu could not show that Ms Van Dyke did not rely on his promises to her detriment.[5]

In relation to relief, the Court of Appeal declined to order Mr Sidhu to take all necessary steps to procure the actual transfer of the land. This would have involved both obtaining his wife's consent, given they were joint tenants; and council approval for the subdivision. Instead, equitable compensation was awarded, to be measured by a 'sum equal to the value [Ms Van Dyke] would now have had the promises been fulfilled.'[6]

Onus of proof in the High Court – no reversal for reliance

Mr Sidhu appealed to the High Court, submitting that the Court of Appeal had improperly reversed the onus of proof in relation to detrimental reliance. The High Court agreed, holding that the authorities relied on by the Court of Appeal as supporting a presumption of reliance did not do so, and that Ms Van Dyke had the burden of proof in all circumstances.[7]

Nevertheless, the appeal was disallowed, on the basis that Ms Van Dyke had (contrary to Ward J's findings) met the onus of proof for detrimental reliance. In so finding, the High Court reviewed 'the whole of the evidence' that was before the primary judge, to show that Ms Van Dyke had made out 'a compelling case of detrimental reliance'.[8]

The High Court pointed to four reasons why Ms Van Dyke's case on detrimental reliance was made out. First, it was likely 'as a matter of the probabilities of human behaviour' that Ms

Van Dyke's evidence – to the effect that she made certain decisions on the basis of the promises by Mr Sidhu – was true.[9] Second, Ward J's finding that Mr Sidhu's promises 'played a part' in Ms Van Dyke's willingness to spend time and effort on maintenance warranted the conclusion that she had discharged the onus, notwithstanding that the promises were not the sole inducement for this course of conduct.[10] Third, the fact that Ms Van Dyke had, from time to time, displayed a concern that Mr Sidhu honour his promises (it is assumed the court is here referring to the requests for Mr Sidhu to commit to the promises in writing), indicated that the promises were material to Ms Van Dyke's choices.[11] Finally, the court found the applicant's argument, that the promises were 'not a real inducement' to Ms Van Dyke's decision to conduct herself as she did, was simply 'not compelling', following a review of the key parts of her testimony under cross-examination.[12] The High Court recast the question about reliance, asking 'Whether the respondent would have committed to, and remained in, the relationship with the appellant, with all that that entailed in terms of the effect upon the material well-being of herself and her son, had she not been given the assurances made by the applicant.' The court found that it was likely Ms Van Dyke would have conducted herself differently had Mr Sidhu told her, when she elected to remain on the property after her divorce, that she would only remain on the property while it suited him and his wife.[13]

Promising the moon – the measure of relief

At the time of hearing, Mr Sidhu's wife would not consent to the transfer of their jointly held land, and the council had not yet approved the subdivision of the property. This formed part of Mr Sidhu's argument that his promises to Ms Van Dyke were conditional and could not form the basis for reliance. The High Court disagreed, holding that what he had represented to Ms Van Dyke was that he would procure the consent of his wife and the subdivision of the property. In circumstances where Mr Sidhu could not achieve these things, the High Court affirmed the decision of the Court of Appeal to order equitable compensation, rather than requiring Mr Sidhu to take active steps to ensure the transfer of property.[14]

Side note – an unrepresented litigant wins the day

Ms Van Dyke's claim started inauspiciously. Unrepresented in the Supreme Court, her claim was struck out by Gzell J, on the basis that Mr Sidhu's wife was not a party, and the promise was only to be fulfilled when the land had been subdivided.[15] However, the Court of Appeal – Young JA (with whom Bathurst CJ and Hodgson JA agreed) – set aside the orders of Gzell J, on the grounds that the learned primary judge 'reacted too quickly' in striking out the claim. The Court of Appeal found that Gzell J should have considered the material more carefully and concluded that it was possible for Ms Van Dyke to succeed.[16]

Endnotes

1. *Van Dyke v Sidhu* [2012] NSWSC 118 at [204].
2. *Taylor v Dickens* [1998] 1 FLR (Eng) 806; in Van Dyke v Sidhu [2012] NSWSC 118 at [261].
3. *Van Dyke v Sidhu* (2013) 17 BPR 32,545; [2013] NSWCA 198 at [79].
4. *Van Dyke v Sidhu* (2013) 17 BPR 32,545; [2013] NSWCA 198 at [83].
5. *Van Dyke v Sidhu* (2013) 17 BPR 32,545; [2013] NSWCA 198 at [103]
6. *Van Dyke v Sidhu* (2013) 17 BPR 32,545; [2013] NSWCA 198 at [138], [140].
7. *Sidhu v Van Dyke* (2014) 308 ALR 232; [2014] HCA 19 at [55], [61].
8. *Sidhu v Van Dyke* (2014) 308 ALR 232; [2014] HCA 19 at [67].
9. *Sidhu v Van Dyke* (2014) 308 ALR 232; [2014] HCA 19 at [69].
10. *Sidhu v Van Dyke* (2014) 308 ALR 232; [2014] HCA 19 at [70]-[73].
11. *Sidhu v Van Dyke* (2014) 308 ALR 232; [2014] HCA 19 at [74].
12. *Sidhu v Van Dyke* (2014) 308 ALR 232; [2014] HCA 19 at [75].
13. *Sidhu v Van Dyke* (2014) 308 ALR 232; [2014] HCA 19 at [76]-[77].
14. *Sidhu v Van Dyke* (2014) 308 ALR 232; [2014] HCA 19 at [86].
15. *Van Dyke v Sidhu* [2011] NSWSC 167 at [38].
16. *Van Dyke v Sidhu* [2011] NSWCA 187 at [13]-[14], [19].