Article Information

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Trumped – promises promises – Estoppel trumps Will

"To Trump" has many facets in this age. Who might have imagined that the march of estoppel can displace freedom of testamentary disposition.

Estoppel for breach of promise is well understood but it must now be regarded as being able to trump a will. The principles in *Giumelli*, *Sidhu*, *Rodda**[1]* and like cases for breach of promise and detriment are well understood now. But what if the alleged promisor is deceased and claimants have no standing under traditional family provision/maintenance legislation? In *Moore v Aubusson* [2020] NSWSC 1466 (**Moore***)*, recourse was had to contract and estoppel. Estoppel by encouragement based on testamentary promises is a path to a remedy.

In *Moore* the NSW Supreme Court has upheld in part, a claim in relation to a deceased estate based on an alleged testamentary promise made to a claimant by the deceased. While the Court dismissed the claim as it was put in contract, it upheld a claim based in estoppel. Over and beyond the deceased's Will, the Court found for a promise for the transfer of two properties in Birchgrove Sydney valued at $9 million, but not for the entirety of the estate (valued at approximately $11 million).

The background of the dispute was that Mr Moore and Ms Andreasen were neighbours of the deceased. The deceased being a widow with no children. Mr Moore and Ms Andreason alleged that they had a close friendship with the deceased who had made an arrangement with them to the effect that they would look after her as she grew older and, in return, the deceased would "look after them" in her Will.

Mr Moore and Ms Andreasen said that this promise was for the whole of the deceased's estate, and alleged also that the promise included that they would not undertake the renovations they had planned to undertake on their own property to the extent that this would block out the deceased's water views of Sydney Harbour and that they would not move away. Other family members and friends of both the deceased and Mr Moore and Ms Andreasen gave evidence that they were told of the arrangement. Mr Moore and Ms Andreasen looked after the deceased after that arrangement was reached for some years until the deceased's death in 2015. They were then notified that the deceased had left her estate in equal shares to her siblings, and only a legacy of $25,000 to Mr Moore. After failing to reach an agreement for a "redistribution" of the deceased's will with the deceased's siblings, Mr Moore and Ms Andreasen sued.

The Court found that an understanding had been reached between the deceased and Mr Moore and Ms Andreasen, but that it did not rise to the level of a contract. The Court found further that the promise from the deceased to Mr Moore and Ms Andreasen was only in relation to the deceased's two properties in Birchgrove (and not for the entirety of the deceased's estate); and that the arrangement did not include a promise that Mr Moore and Ms Andreasen would not block out the deceased's water views (and so forego their investment opportunity), or that they would not move away.

The Court held that the care and support that Mr Moore and Ms Andreasen provided to the deceased over the years, at the expense of their own commitments, was sufficient to constitute detrimental reliance on the deceased's promise. On this basis the Court ordered that the two properties be transferred to Mr Moore and Ms Andreasen.

Estoppel trumped the Will.

The lessons for advisors from this case are to advise in contract and equity and not only of testator family maintenance claims when advising on the estate plan. As usual, record the arrangements in writing and update the Will.

[1] Giumelli v Giumelli (1999) 196 CLR 101; Sidhu v Van Dyke (2014) 251 CLR 505; Rodda v Ian Rodda Pty Ltd [2015] SASC 95