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Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:*	**20/01/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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ANDREW PRESTON

Plaintiff

and

THE EXECUTOR OF THE ESTATE OF WILLIAM PRESTON

Defendant

_____

Mark Orr KC with Conor Lockhart (instructed by Tiernans, Solicitors) for the Plaintiff
Keith Gibson (instructed by JPH Law Ltd., Solicitors) for the Defendant

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SIMPSON J

Introduction

[1] There is a significant dispute in this case arising from the death of the testator, William Preston. The plaintiff is one of twenty nephews and nieces of the deceased, all of whom are beneficiaries under the deceased s will. Notwithstanding the contents of the deceased s will, the plaintiff has mounted a claim in proprietary estoppel in relation to several of the farms owned by the deceased. The proprietary estoppel action is listed for hearing in September 2026.

[2] The plaintiff remains on the lands in relation to which he has brought the claim. Those lands are known as the Home Farm, McCullough s and McKee s farm. He says that on a number of occasions the deceased promised those lands to him, and he relied on that promise to his detriment over a number of years.

[3] The defendant, Kate Ervine, a solicitor in Portadown, being the executor of the estate of the deceased, has brought injunction proceedings to restrain the plaintiff from trespassing on or entering into or remaining on" those lands and a further order compelling the plaintiff to remove all livestock and machinery from the lands. In para 8 of her grounding affidavit, she states that the plaintiff continues to occupy the land

without conacre payment being made to the estate. The conacre rent is some £200 per year per acre. There are 83.7 acres in the lands.

The parties submissions

[4] This is not the place for a very detailed investigation of the plaintiff s claim or the defendant s defence to that claim. I confirm that I have taken all of the submissions into consideration, and read again all of the documents referred to during the hearing. I will set out only some of the submissions for an understanding of the issues.

[5] For the executor, and moving party, Mr Gibson took me through a detailed chronology of the matter. This included earlier proceedings with a caveat lodged by the plaintiff (29 June 2022, renewed 23 December 2022), warning to caveat (18 April 2023), appearance (3 May 2023) and agreement between the parties dated 6 October 2023). His firm contention is that when all the documentation is properly examined, the plaintiff s estoppel case is manifestly a weak one.

[6] The initial letter of claim is dated 29 July 2022. The salient assertions are as follows:

> Throughout the deceased s life, from 1972 onwards, the deceased made multiple assurances and promises to our client that our client would inherit land from his estate. The most specific promise of this nature was made to our client when the deceased handed an envelope to our client containing the invoice/receipts from when the deceased had purchased the lands … The deceased told our client directly that our client would inherit these 3 portions of land and that *they would be his.*" Our client instructs that third parties were also made aware of this specific assurance."

[7] The letter also asserts that the plaintiff worked on the deceased s farm and for the last 5 years of the deceased s life he essentially managed the farm single-handedly. It is also asserted that the deceased stressed to third parties that he wanted the farm to remain in the Preston name. The plaintiff says that in response to these promises throughout the life of the deceased [he] continued to work countless hours on the deceased s farm for no remuneration." The plaintiff remained a farmer, unlike some of his siblings. It is asserted in the letter that it would be unconscionable for these promises to be reneged on." The plaintiff s Statement of Claim essentially follows the points made in the letter, and paras 8 and 9 of the Statement of Claim identify the core of the claim more or less as set out in the above quotation from the letter.

[8] Mr Gibson pointed out that the plaintiff made conacre payments to the estate in respect of the disputed lands in 2022 which, he says, shows that he was acknowledging the estate s title. In addition, he drew my attention to a letter from

solicitors acting for the plaintiff in November 2019. This letter is to the controller appointed in relation to the affairs of the deceased in the latter stages of his life. This refers to the plaintiff managing and administering the farm and stock since the hospitalisation of [the deceased] in or about September 2018." It identifies the work which he says he carried out proposing payment of £50 per day (£350 per week). The letter says that provision needs to be made for the payment to [the plaintiff] for the last 14 months work…" This is inconsistent with the case being made by the plaintiff in support of his claim of unconscionability that he carried out work completely unpaid. Master Wells allowed a payment of £5,000, but this was rejected by the plaintiff, who eventually accepted the sum of £12,500 for his work. In a letter from his solicitors this acceptance is said to be in full and final settlement of all claims against the estate of [the deceased] by [the plaintiff]."

[9] There was a family meeting on 31 May 2022 involving the plaintiff and other beneficiaries. Ms Ervine was in attendance. Inter alia, it is recorded that the plaintiff indicated that there were two bits of ground that he is interested in buying." Significantly, says Mr Gibson, there was no assertion by the plaintiff that he had a claim against the estate. If he really had such a claim, this was the perfect opportunity to articulate it.

[10] Mr Gibson took me to the statements of witnesses who will be called on the plaintiff s behalf at trial. He examined each of the statements and noted that in not one is there any mention of the witness being aware of any promises made by the deceased that the farm would go to the plaintiff.

[11] Mr Gibson says that the plaintiff s life was always in farming and he inherited his own father s farm when his father died. He did not remain in farming merely because of the alleged promise. He says that the documents which the plaintiff relies on and which were in the envelope handed to him by the deceased consist merely of historical invoices from solicitors — no title deeds or land certificates were in the envelope.

[12] The plaintiff has remained on the lands and has paid no conacre rental since the 2022 season. The defendant wants the plaintiff to vacate the lands prior to the 2026 letting season.

[13] For the plaintiff, the respondent to the application, Mr Orr KC robustly rejects the suggestion that this is a weak claim. He says that the outstanding moneys amount to only a fraction of the value of the estate — perhaps 0.6%. Even if the plaintiff s case fails his share of the estate (as per the will) is easily sufficient to reimburse the estate. There is no certainty of any conacre letting in 2026.

[14] He says that the statements point to the detriment suffered by the plaintiff in relying on the deceased s promise — those witnesses regularly saw the plaintiff with, and working for, the deceased, working with cattle etc. Any payment already made

to the plaintiff only related to work done when the deceased was in a home and that the plaintiff bought clothes for the deceased.

[15] He rejects the suggestion made by Mr Gibson that the fact that the plaintiff s life was in farming somehow weakens the detriment case. He says the gift of the documents (in the envelope) was confirmatory — there is no indication of where the land certificates were at that time — and what other logical reason could there be for the documents, which included maps and receipts? No other reason has been proffered. On legal advice, the plaintiff ceased paying because he claims to be the owner in equity and therefore he is entitled to be on the lands.

[16] There is no boundary between the disputed lands and the plaintiff s lands, and he is effectively working all the lands. This application for an injunction is described as wholly inappropriate and spiteful. The status quo should be maintained.

[17] In his reply Mr Gibson stated that the plaintiff has not yet established any equitable right — that is for the court hearing in September — so he is trespassing, and the defendant wants to exercise the property rights of the estate. Effectively the plaintiff wants to continue to occupy the lands, free, for another year.

Discussion

[18] This is an application for an interim injunction. The court s authority for the grant of an injunction is contained in section 91 of the Judicature (Northern Ireland) Act 1978, which provides that the court may grant an injunction in any case where it appears to the court to be just or convenient to do so." So, the statutory test is whether it is just and convenient.

[19] The use of the word may" indicates that the grant of an injunction is a discretionary remedy. The circumstances of each case where the court is considering whether to grant an injunction will, perforce, be unique. However, from the time of the decision in *American Cyanamid Co. v Ethicon Ltd* [1975] AC 396, and subsequent refinements, the courts have a number of matters to take into consideration in deciding whether an injunction should be granted. It needs to be recognised that these are guidelines for the assistance of the court.

[20] First, is there a serious question to be tried? It has to be borne in mind that, at this interim stage of the proceedings, the court is not usually in a position to resolve significant questions of fact or of law, although in some cases the court would be able, from a reading of the papers, to form a view of the relative strengths of the parties' cases. If it is able to form such a view, it should take that view into account.

[21] Secondly, would the award of damages be an adequate remedy for the plaintiff? If damages would be an adequate remedy, and the defendant is in a position to pay damages, an injunction will not be granted. Thirdly, the court also has to consider whether, if the plaintiff lost the subsequent action, the defendant would be

adequately compensated by the plaintiff s undertaking in damages. If so, then there would be no reason to refuse the injunction.

[22] Fourthly, if matters are evenly balanced, then the court must consider where the balance of convenience lies as between the parties. As Lord Diplock said in *American Cyanamid* ([1975] AC 396, 408):

> It is unwise to attempt to list all the various matters that need to be taken into consideration in deciding where the balance lies. But, the court should certainly take into account the prejudice to each party if the injunction is granted and if the injunction is not granted and that is by having regard to the very specific facts of each case. Ultimately, each case will turn on its own specific facts."

[23] In the event that the Court comes to assess the balance of convenience, I consider that regard should also be had to the statement of Lord Hoffman in *National Commercial Bank Jamaica Ltd v Olint Corp Ltd (Jamaica)* [2009] UKPC 16 where he referred to the underlying principle... that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other..." (para 17). If, on a consideration of the balance of convenience the court concludes that it appears approximately equal on both sides, Lord Diplock felt that it might be wise to preserve the status quo, which appears to refer to the time when the plaintiff first embarked on the activity now sought to be restrained. In some cases, the time to judge the status quo might be different, for example if the party seeking the injunction was guilty of unreasonable delay during which time the defendant might have done something to alter his position in the belief that the party seeking the injunction did not object to the defendant s actions.

[24] Finally, the court is constrained to identify whether there are any special factors to be taken into consideration.

[25] The testator made a will leaving all of his property, including these lands, to all of his nephews and nieces equally. The plaintiff has a proprietary estoppel claim which is vigorously contested by the defendant executor, and the case involves significant factual issues to be resolved by the court having heard from a number of witnesses. The estate is the legal owner of the disputed lands. The plaintiff asserts an equitable interest in the lands. In my view there is no doubt that there is a serious issue to be tried. I am not in a position to resolve, finally, all the factual matters but having considered all of the submissions made to me, and having read all the documentation to which I was directed during the hearing, my view (for the purposes of this application) is that the plaintiff faces something of an uphill task to establish his claim. I need say no more than that, but I am entitled to, and do, take that view into account.

[26] I then ask whether the award of damages to the party seeking the injunction — here, the defendant — would be an adequate remedy. The loss to the defendant, ie the estate, is easily calculable and has been done by Mr Gibson, for the defendant, in his skeleton argument in the main action. As Mr Orr KC points out, such is the value of the estate that even if the plaintiff does not succeed in his proprietary estoppel action, his share of the estate will be sufficient to pay the losses to the estate if he remains on the lands until September 2026, so damages will be an adequate remedy.

[27] However, this is an application relating to property rights. In this connection I was referred to Capper s *Injunctions in Private Law.* At para 2.26, under the rubric Property right but modest loss" the author says:

> The adequacy of damages has been an issue in several cases where the claimant can point to the continuing infringement of a property right but has either sustained little recoverable loss or the defendant is able and willing to compensate for any loss. In *Patel v WH Smith (Eziot) Ltd*. [1987] 2 All ER 569 a three judge Court of Appeal rejected the defendant s argument that its trespass caused the claimant no loss so should not be the subject of an interim injunction. Only in very exceptional circumstances would a court require a property owner to tolerate a trespass."

[28] In paras 5.040 and 5.041, albeit in a discussion about final injunctions:

> 5.040 Another very powerful statement in support of property rights being protected against trespass may be found in the judgment of Lord Davey for the Privy Council in *Saunby v Water Commissioners of the City of London and the Corporation of the City of London (Ontario)* [1906] AC 110. The appellant sought an injunction to restrain trespass on his land and interference with his water rights. The respondents pleaded statutory authority, pursuant to which the appellant could obtain compensation via the statute s arbitration procedure. The Privy Council held that the respondents had not properly invoked the statutory procedure so that the steps they had taken to expropriate the appellant s rights amounted to trespass for which an injunction was the appropriate remedy. The injunction s effects would be lifted once the statutory procedure was put into effect. Lord Davey said this:
>
> > The acts complained of in the present case are an illegal taking of the appellant s land, and an interference with the free use by him of his property, and the damages have been found to

> be of a substantial character. It has been frequently pointed out that to refuse an in junction in such a case would be to enable the defendant to expropriate the plaintiff without statutory authority or without following the procedure pointed out by the statutory authority…If and when the respondents think fit to proceed under the Act to expropriate the appellant the injunction will come to an end…'.
>
> 5.041 The point made in these dicta is that in the absence of statutory authority justifying the respondents conduct, that is trespass, and the appropriate remedy is injunction. The court is not to refuse an injunction because it seems a certainty that the statutory procedure will be properly invoked in the near future."

[29] If an injunction were to be refused in this case the plaintiff would, in effect, enjoy the use of the land well before any adjudication as to whether or not he has any equitable right. In those circumstances, I do not consider that damages would be an adequate remedy for the estate which wishes to deal with the lands, to which it holds legal title, as it chooses.

[30] As to the question whether damages would be an adequate remedy for the plaintiff, I am satisfied that if the plaintiff has to leave the lands until such time as his claim is finally adjudicated upon — sometime in the autumn of this year, a period of, in reality, no more than 10 or so months — any damages which he might suffer would be available from the estate and I am further satisfied that those damages would be an adequate remedy for the plaintiff.

[31] From what I have said above, I do not consider that matters are evenly balanced and I therefore do not have to consider where the balance of convenience lies. However, if I am wrong about this, I consider that the balance of convenience favours the defendant. The plaintiff s case has yet to be adjudicated on. He has remained on the lands without paying, now for some three years. The estate, the legal owner of the lands, wishes to be able to let the lands to whomsoever it chooses. In all the circumstances I am satisfied that the least irremediable prejudice will be caused to the defendant if the application for an injunction succeeds.

[32] I identify no special factor to be taken into consideration. If, however, delay might be such a consideration, I am satisfied by the submissions of Mr Gibson, which he took me through, that there is no delay on the part of the defendant such as to alter my view of this matter.

Conclusion

[33] I allow the defendant s application and will make the orders sought in paras 1 and 2 of the summons.

[34] Having heard the parties, I will reserve the question of costs to the trial judge.