

3.3.2 Formation of Contracts

The case of *Cobbe v Yeoman's Row Management Ltd.* [2008] UKHL 55 is a decision on the LP(MP)A s.2(1) (contracts to transfer an interest in land) and in particular whether a constructive trust or proprietary estoppel can be used to save an informal transaction which does not comply with this section.

In this case, the claimant was a property developer who spent large sums of money in obtaining planning permission for the development of property belonging to the defendant. He was relying on an 'in principle' oral agreement that he could buy the property from the defendant, develop it, and then they would both get further sums from the sale of the units developed. However, once planning permission had been granted, the defendant went back on his agreement and refused to sell the property to the claimant after all. Since there was no written contract complying with LP(MP)A 1989 s.2(1), no claim could be brought to enforce the contract. Therefore, the claimant brought an action claiming that there was a proprietary estoppel in his favour, or that alternatively there was a constructive trust, both of which would have given him a proprietary interest in the property. He also made claims based on restitution and unjust enrichment, as well as a claim to a *quantum meruit*.

The House of Lords, reversing the Court of Appeal ([2006] EWCA Civ 1139), held that there were no grounds for holding that there was either a proprietary estoppel or a constructive trust. There was no proprietary estoppel because there was no certain interest in land which it was expected would be transferred; there were to be further negotiations on the exact terms of the agreement. The claimant, an experienced property developer, knew that the agreement was binding 'in honour' only. There was no constructive trust because the defendant withdrawing unconscionably from the agreement was not enough to found such a trust. The property had been owned by the defendant long before the agreement was reached.

The claimant was entitled to damages based on unjust enrichment and *quantum meruit* for the sums he had spent, but not to an interest in the property.

There are articles on this case:

Pawlowski, M 'Oral Agreements: Estoppel, Constructive Trusts and Restitution' (2008) 12 L and T Rev 163

Chambers, K 'Property supplement: Yeoman's scope' (2008) 158 NLJ 1629

3.3.3.2 The requirement for a deed

In the case of *HSBC Trust v Quinn* [2007] EWHC 1543 (Ch) the judge considered whether a document which had been signed and witnessed, but which was not described as a deed anywhere on its face, was validly

executed as a deed under LP(MP)A 1989 s.1(2). It was held that was not a deed. In considering how a document could be a deed 'otherwise' than by describing itself as a deed or expressing itself to be executed as a deed, Christopher Nugee QC said at paragraph [51]:

It seems to me plain that the Act provides that documents can be deeds without using the word "deed"; but on the other hand that a document is only to be held to be a deed if it is clear from the wording of the document itself ("on its face") that it was intended to be a deed.

It is not really clear from this case what would be sufficient other than using the word 'deed' itself, so this is clearly the safest course of action.