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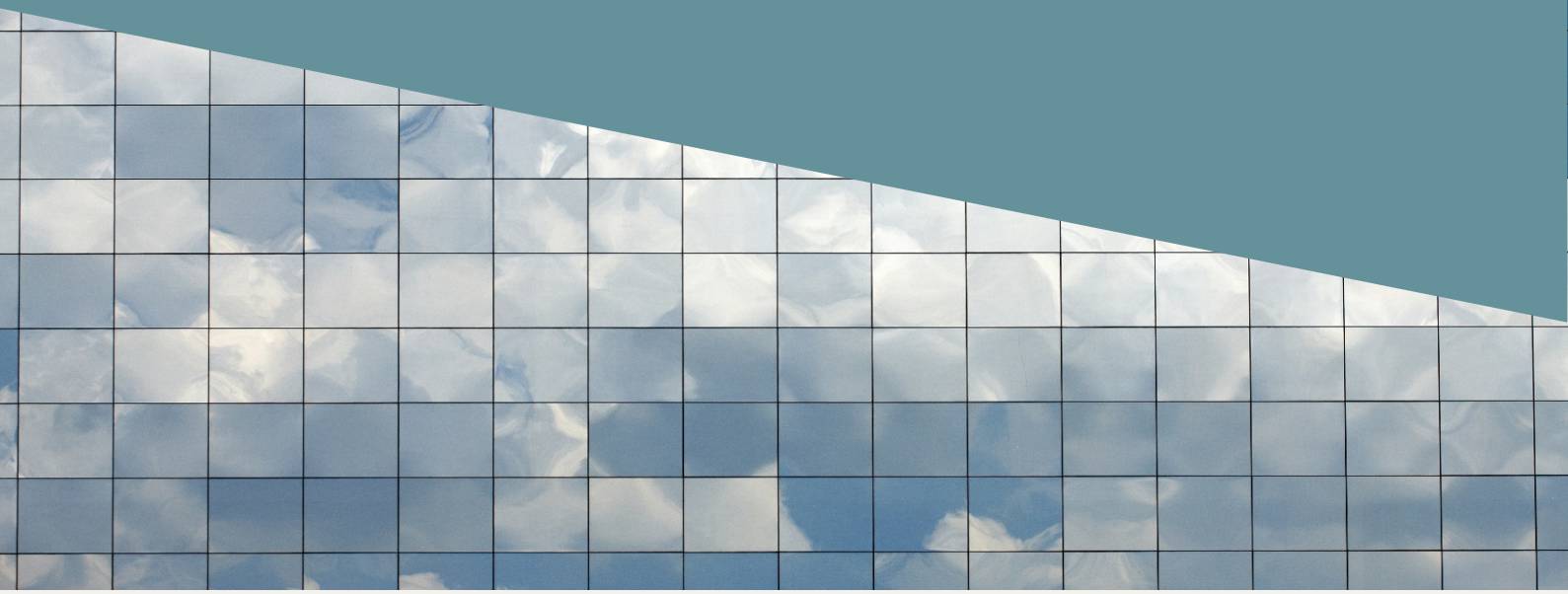

Favourite Cases: *Central London Property Trust Ltd* v *High Trees House Ltd.*

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Paul Burton

Call: 1998

Barrister

Paul Burton represents clients in business-critical commercial, company law and trust disputes, often involving allegations of fraud. He has extensive trial advocacy experience and his cases frequently start with urgent pre-emptive remedies.

Reported at [1947] 1 K.B. 130

Any consideration of a favourite judgment is bound to include Lord Denning if only for his memorable opening lines. Who can forget such favourites as:

"In 1966 there was a scripture rally in Trafalgar Square. A widower, Mr. Honick, went to it. He was about 63. A widow, Mrs. Rawnsley, the defendant, also went. She was about 60. He went up to her and introduced himself. He was not much to look at. "He looked like a tramp," she said. "He had been picking up fag-ends." Next day he went to her house with a gift for her. It was a rose wrapped in a newspaper. Afterwards their friendship grew apace. They wrote to one another in terms of endearment. We were not shown the letters, but counsel described them as love letters."[1]

"Broadchalke is one of the most pleasing villages in England. Old Herbert Bundy, the defendant, was a farmer there. His home was at Yew Tree Farm. It went back for 300 years. His family had been there for generations. It was his only asset. But he did a very foolish thing. He mortgaged it to the bank. Up to the very hilt."[2]

"It happened on April 19, 1964. It was bluebell time in Kent. Mr. and Mrs. Hinz had been married some 10 years, and they had four children, all aged nine and under. The youngest was one. Mrs. Hinz was a remarkable woman. In addition to her own four, she was foster-mother to four other children. To add to it, she was two months pregnant with her fifth child."[3]

Mind you, more modern judges are not to be outdone:
"The appellant is a lap dancer. I would not, of course, begin to know exactly what that involves. One can guess at it, but could not

[1] Burgess v Rawnsley [1975] Ch. 429
[2] Lloyds Bank v Bundy [1975] Q.B. 326
[3] Hinz v Berry [1970] 2 Q.B.40

faithfully describe it. The Judge tantalisingly tells us, at paragraph 21 of his judgment, that the purpose is "to tease but not to satisfy"".[4]

"I have chosen High Trees because it is perhaps the birthplace of the modern law of promissory estoppel yet was an ex-tempore decision of a first instance judge in the QBD."

Back to Lord Denning. The judgment I have selected does not have a memorable opening line, but in all other respects it is classic Denning: short sentences and fearless use of the law. It is also a judgment that every chancery lawyer will be familiar with: *Central London Property Trust Ltd v High Trees House Ltd*.[5] I have chosen High Trees because it is perhaps the birthplace of the modern law of promissory estoppel yet was an ex-tempore decision of a first instance judge in the QBD.[6]

The facts are straightforward. The parties entered into a lease of a block of flats in September 1937 at a ground rent of £2,500 p.a. The lessee planned to let the flats and use the rental proceeds to pay the ground rent. War intervened. The parties agreed in beginning of the term. The reduced rent was paid. By 1945 all the flats in the block were let. The landlord issued a claim for the difference between the £2,500 and £1,250 for the quarters ending 29 September and 25 December 1945.

The lessee attempted to raise an estoppel against the landlord based on the agreement to pay the reduced sum.

Following the decision of the House of Lords in *Jorden v Money* the settled position was essentially that no estoppel could be founded on a representation other than a representation of existing fact.[7] A promise or undertaking as to the future would be ineffective unless supported by consideration. There was also the small problem of the rule in *Foakes v Beer*, which built upon the principle that payment of a lesser sum than the whole amount of a debt will not extinguish the debt, even if the creditor agreed to accept it in full payment.

Neither of these decisions troubled Lord Denning who did not consider the case before him, or the authorities he relied upon, to be cases of estoppel at all. The law, according to Lord Denning, had not stood still since *Jorden v Money*.

He drew on a number of decisions that he considered were all really "cases in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made, and which was in fact so acted on. In such cases the courts have said that the promise must be honoured".[8] These cases were described by Lord Denning as the natural result of the fusion of law and equity and the decisions in *Hughes v Metropolitan Railway* and *Birmingham and District Land Co. v. London & North Western Railway*, which afforded sufficient basis for saying that a party would not be allowed in equity to go back on such a promise.

Hughes was also a decision that involved a classic bit of judicial "first principle of equity" decision making when granting relief from forfeiture: "…a course of negotiations which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable, having regard to the dealings which have thus taken place between the parties".

[4] Per Ward LJ, Sutton v Hutchinson [2005] EWCA Civ 1773
[5] [1947] 1 K.B. 130
[6] At the time the KBD and Denning J
[7] (1854) 5 H.L.C. 185
[8] [1947] 1 K.B. 130, at 134

Birmingham and District Land made clear that this 'first principle' was not limited to relief from forfeiture cases.

Jorden v Money was swiftly and tersely distinguished by Lord Denning and *Foakes v Beer*, which had simply not considered such issues, had effectively had its day:

"Jorden v. Money can be distinguished, because there the promisor made it clear that she did not intend to be legally bound, whereas in the cases to which I refer the proper inference was that the promisor did intend to be bound. In each case the court held the promise to be binding on the party making it, even though under the old common law it might be difficult to find any consideration for it. … In my opinion, the time has now come for the validity of such a promise to be recognized. The logical consequence, no doubt is that a promise to accept a smaller sum in discharge of a larger sum, if acted upon, is binding notwithstanding the absence of consideration: and if the fusion of law and equity leads to this result, so much the better. That aspect was not considered in Foakes v. Beer. At this time of day however, when law and equity have been joined together for over seventy years, principles must be reconsidered in the light of their combined effect."

"This was very much Lord Denning off-piste, relying principally on authorities that neither counsel had cited to him."

So Lord Denning decided, albeit *obiter*, that where parties enter into an arrangement which is intended to create legal relations between them and in pursuance of such arrangement one party makes a promise to the other which he knows will be acted on and which is in fact acted on by the promisee, the court will treat the promise as binding on the promisor to the extent that it will not allow him to act inconsistently with it.

This was very much Lord Denning off-piste, relying principally on authorities that neither counsel had cited to him. The influence of High Trees got off to a slow start. In the edition of Snell published after the decision it warranted only one footnote, and one commentator considered it must have "*a somewhat precarious hold on life*". As we now know that pessimistic assessment has proved to be wrong.

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