Neutral Citation Number: [2023] EWHC 2050 (Ch)

Case No: PT-2020-000066

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Rolls Building
Fetter Lane
London, EC4A 1NL

09/08/2023

Before :

MR JUSTICE RAJAH

- -

Between :

MICHAEL JOHN SPENCER

Claimant

- and -

(1) ESTATE OF JOHN MITCHELL SPENCER (DECEASED)
(2) PENELOPE ANNE SPENCER
(3) JANE MARY FLOWER

Defendants

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- -

Mr Stephen Jourdan KC and Mr Christopher Jones (instructed by **Roythornes**) for the **Claimant**
Ms Caroline Shea KC and Sarah Haren KC (instructed by **Thrings**) for the **Defendants**

Hearing dates: 12-16 June, 19-21 June 2023

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Approved Judgment

This judgment was handed down remotely at 10.00am on Wednesday 9th August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Rajah:

1. The Claimant ("Michael") has brought a claim against the estate of his late father, John Spencer ("John"). The estate is represented by his sisters, the Second Defendant ("Penny") and the Third Defendant ("Jane"). For clarity and convenience I will refer to the parties and other members of the family by their first name, as counsel did during the trial. I intend no disrespect in doing so.

2. John had a farm comprising land he owned (about 405 acres) and tenanted land (about 411 acres). He and Michael had farmed all of that land together in partnership since 1983 when Michael was 19 years old. John did not leave the farmland he owned to Michael on his death. This is one of many farm cases in which a son says his father assured him that he would inherit the land on his father's death, and that he has acted to his detriment in reliance on that assurance such that it would be unconscionable to allow the father to renege on that assurance. The claim is that Michael is entitled to have the farmland owned by John at his death transferred to Michael on the basis of a proprietary estoppel or a constructive trust.

3. Penny and Jane were appointed by the Court to represent John's estate on 29 April 2020 and were subsequently granted probate on 15 October 2020. Just days before the trial started on 12 June 2023, Penny was admitted to hospital. Expert medical evidence was obtained and said that she was temporarily lacking litigation capacity. Her son, William Plumb, filed and served a certificate of suitability and acted as her litigation friend from 8 June 2023.

THE BACKGROUND

4. John Spencer was born in 1932 into a farming family. John became a farmer. He married Jean in 1956. They had three children – Jane, born in 1957, Penny born in 1959 and Michael, born in 1963. Jean died in 2015 and John died in 2018.

5. John had farmed in Lincolnshire on his own account since the 1960s. He first held Grange Farm, North Witham as a tenant of the Buckminster Estate under a tenancy agreement dated 20 November 1964, which was replaced by an agreement of 23 February 1982. John inherited about 59 acres from his father in 1975 and acquired some other small parcels of land in the 1970s. The most significant acquisition made was in 1982, when John bought about 300 acres of freehold land at Glebe Farm, Stainby, Colsterworth ("**the land at Stainby**" or "**the Stainby land**") and Bourne Road. John continued to buy land, in his own right and from his own funds, in the 1980s and 1990s and then again in the 2010s.

6. The picture of John built by the witness evidence was of a proud, strong-willed and old fashioned farmer. He had succeeded to his own father's tenancy of Grange Farm and it is clear to me that throughout his life he hoped and expected that Michael would succeed him in farming the land, either with Penny, or after she left farming in 1996, on his own. Michael says that from his earliest days, it was made clear to him by his father that he was going to have a career in farming. He began driving farm machinery at the age of 12, and at 13 and 14, was regularly working on the farm during school term time as well

as in the holidays. He left school when he was 15 with no exam qualifications, and worked on the farm.

7. The relationship between John and Michael was not an easy or entirely happy one. They clashed regularly. Michael's evidence is that they had an argument once a week. Mr Spence (a tractor and farm machinery dealer who was once engaged to Penny) gave evidence that the atmosphere on the farm was the worst he came across in his job and that "*there was always a war going on between the two of them*". Mr Heffin Davies who was a family friend noticed that John tried to control Michael and at times could be very difficult and stubborn. I have not, however, seen anything to suggest that John did not love Michael and vice versa.

8. John farmed as a sole trader until 1983. In 1983 - when Penny was 23 and Michael 19 – John formed a farming partnership with his wife, Michael, and Penny which carried on the farming business on Grange Farm and Glebe Farm. The land was farmed as a mixed arable and livestock holding. The four partners were initially entitled to profits in equal shares, but by 1991 John reduced his profit share to 5% in favour of Michael and Penny, who then became entitled to 35% each. During these years Michael lived rent-free in the farmhouse with his parents or in a cottage on Grange Farm and had many of his living expenses paid for by the partnership.

9. In 1993 John made a will under which he left all his freehold land and buildings to Michael subject to inheritance tax, a legacy of £150,000 to Penny, and subject to that the rest of his estate to his trustees to pay the income to Jean for life and thereafter for Jane and Penny in equal shares absolutely.

10. Penny and Jean retired from the partnership in 1996. From then on, and until his death in 2018, John farmed in partnership with Michael, in the profit shares 5% to John and 95% to Michael. Even though the freehold farmland was not a partnership asset, the partnership paid no rent for the use of the land and the partnership business generated substantial profits. Undrawn profits were added to each partner's capital account according to their share of the partnership and Michael's capital account as shown in the last drawn partnership accounts is over £1.4m. That is held in mainly liquid assets. The partnership also made very substantial pension provision for Michael, leaving him with a pension fund worth £745,754.03 at John's death.

11. In 2003 John made a will ("**the 2003 Will**") under which he left his farmland and interest in the partnership business to Michael subject to inheritance tax and, in the event of his wife predeceasing him, the rest of his estate on discretionary trust. He left a letter of wishes making clear his wish that the trust monies be divided equally between Jane and Penny, but that as Jane's marriage was in trouble he did not wish her to receive any capital from his estate until matters were resolved with her husband.

12. It is apparent from the attendance note of his attendance on Roythornes & Co ("**Roythornes**") in connection with the preparation of the 2003 Will, that John had been trying to persuade the Buckminster Estate to agree that Michael could succeed to the Buckminster Estate tenancy, but with little success. In the end, John initiated the formal succession procedure under Part IV of the Agricultural Holdings Act 1986 to achieve that. On 30 March 2006, John served on the Buckminster Estate trustees a retirement notice pursuant to s.49 of the Agricultural Holdings Act 1986 nominating Michael as his successor to the Buckminster Estates tenancy. On 27 April 2006, Michael applied to the

Agricultural Land Tribunal under s.53 for a direction entitling him to a succession tenancy. In order to succeed, Michael had to prove that he satisfied the "*livelihood condition*" and the "*occupancy condition*": see s.50(2) and Schedule 6. He also had to satisfy the Tribunal that he was a suitable person to become the tenant: s.53(5). Penny, in her witness statement, says that the landlord was concerned that Michael was not "*a suitable person*" because of his lack of education. This is not borne out by the documents.

13. In essence, the livelihood condition is that, for the 7 years up to the service of the retirement notice, the applicant's only or principal source of livelihood for a period of 5 years derived from his agricultural work on the holding or on an agricultural unit of which the holding forms part. The occupancy condition is that the applicant is not the occupier of a "*commercial unit of agricultural land*", land which is capable, when farmed under competent management, of producing a net annual income at least equal to the average annual earnings of two full-time, male agricultural workers aged 20 or over.

14. John and Michael instructed solicitors and a land agent to conduct the succession application on their behalf. Contrary to Penny's evidence, there was no issue about Michael's suitability. There was an issue about the livelihood condition because John refused to allow the landlord's representatives to see the partnership accounts. Ultimately, that was resolved and the landlord agreed to the application. The Agricultural Land Tribunal gave a succession direction on 16 July 2007 and a succession tenancy was granted to Michael on 23 July 2007.

15. John's physical health had begun to decline with age and it is common ground that, with the help of employees and contractors, by the time he succeeded to the tenancy Michael did much of the physical labour on the land.

16. In 2010 John transferred 3 acres of land at South Witham, which is understood to have planning potential, to Michael.

17. Jean Spencer died on 26 March 2015.

18. By May 2017 John had instructed Graham England, a solicitor with Duncan & Toplis Probate Services, in relation to the preparation of a new will. On 26 March 2018 John executed his third and last will ("**the 2018 Will**"). It is common ground that by this time Michael had been diagnosed with multiple sclerosis.

19. John died a few months later, on 18 October 2018. His last will left a legacy of £5,000 to each grandchild and greatgrandchild who survived him and attained the age of 30. It left John's 5% interest in the partnership to Michael. All of John's freehold agricultural land and buildings, other than a rental investment house at 11 Northerns Close, were left to a discretionary trust. All of his other freehold land and freehold buildings other than 11 Northerns Close was left to the same trust, subject to tax. By a letter of wishes of the same date as the 2018 Will, John expressed his wish that the land be held for the benefit of all of his children, but ultimately should pass to his grandchildren in equal shares after they had attained the age of 30. The residuary estate was left to Michael, Penny and Jane.

20. In the months after his death a question arose as to whether independent personal representatives should be appointed; in that connection Penny instructed solicitors (Sills & Betteridge), with Roythornes at that stage instructed by Michael and Jane jointly. The

live dispute at that stage was between Penny on the one hand and Jane and Michael on the other, in their capacity as executors under John's will. Jane ceased to instruct Roythornes in March 2019 and instructed separate solicitors (then Tees Law).

21. Initially Roythornes, now acting solely for Michael, corresponded with the will draftsman, Duncan & Toplis Probate Services, on 12 April 2019 by sending them a so-called *Larke v Nugus* letter to ascertain whether there might be grounds for challenging the validity of the will. It is now common ground that the 2018 will is valid; Michael appears to have accepted that there is no basis for contesting its validity. Instead, a formal letter of claim on the grounds of proprietary estoppel was sent by Roythornes on Michael's behalf on 16 May 2019. These proceedings were issued in January 2020.

PROPRIETARY ESTOPPEL – THE LAW

22. There was little disagreement between the parties on the relevant law.

23. The doctrine of proprietary estoppel was described as follows in *In re Basham decd* [1986] 1 WLR 1498, 1503:

> *'Where one person, A, has acted to his detriment on the faith of a belief, which was known to and encouraged by another person, B, that he either has or is going to be given a right in or over B's property, B cannot insist on his strict legal rights if to do so would be inconsistent with A's belief.'*

This passage was quoted with approval by the Court of Appeal in *Wayling v Jones* (1993) 69 P&CR 170 and in *Gillett v Holt* [2001] Ch 210, 226F.

24. There are three main elements to a proprietary estoppel (i) an assurance by B (whether by words or inferred from conduct) (ii) reasonable reliance on the assurance by A and (iii) detriment in consequence of that reasonable reliance; see *Thorner v Major* [2009] UKHL 18 at [29]. The latter two elements are often intertwined and they are sometimes referred to together simply as "detrimental reliance", but it is important to keep in mind their constituents. If these elements are present they give rise to an equity which the Court will decide how best to satisfy.

25. These are not, however, watertight compartments. As Robert Walker LJ said in *Gillett v Holt* at 225:

> *"…it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a 'mutual understanding' may depend on how the other elements are formulated and understood. Moreover, the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round."*

26. The assurance must be '*clear enough'* but what amounts to sufficient clarity, as Lord Walker explained in *Thorner v Major* at [56] is "*hugely dependent on context*". In its proper context the assurance must be reasonably understood by A to be unambiguous and intended to be taken seriously. B's subjective intention in making the statement is not relevant; what matters is how the statements were reasonably understood; *Thorner* at [3-5], [17] and[18].

27. The assurance must be that A will acquire a proprietary interest in specified property owned (or possibly about to be owned) by B; *Thorner* at [2] and [61]. It flows from this principle that an assurance that A will be given merely a job, role or responsibility – such as, Ms Shea submits in this case, the entitlement to conduct the farming activities on the farm- cannot give rise to a proprietary estoppel; *Gladstone v White* [2023] EWHC 329 (Ch) at [23].

28. The assurance does not need to be expressed to be irrevocable. As observed in *Gillett* at 229E, "*…it is the other party's detrimental reliance on the promise which makes it irrevocable*". It is, however, important to distinguish between mere statements of present (revocable) intentions and statements tantamount to a promise; *Gillett* at 227G to 228F . It is not reasonable to rely on the former. The latter, on the other hand, may be reasonably understood as intended to be taken seriously and therefore reasonably relied upon.

29. There must be a sufficient link between the assurance and the conduct which constitutes the detriment. B's communications do not have to be the sole inducement for A's conduct; it is sufficient if they are an inducement: *Gillett* at page 226G-H.

30. Detriment must be pleaded and proved, but it is not a narrow or technical concept. It need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The issue of detriment is judged at the moment when B decides to repudiate his assurance. The broad inquiry which then arises is whether the repudiation of the assurance is or is not unconscionable in all the circumstances. See *Gillett* at 232D-F.

31. If an equity has arisen then the Court must decide how it should be satisfied. Earlier authorities must now be read in light of the judgment of Lord Briggs in *Guest v Guest* [2022] UKSC 27 with whom Ladies Arden and Rose agreed. He summarised the aim of the remedy at [90]:

    "*The aim [of the remedy] remains what it has always been, namely the prevention or undoing of unconscionable conduct. In many cases, once the equity is established, then the fulfilment of the promise is likely to be the starting point, although considerations of practicality, justice between the parties and fairness to third parties may call for a reduced or different award. And justice between the parties may be affected if the proposed remedy is out of all proportion to the reliant detriment, if that can easily be identified without recourse to minute mathematical calculation, and proper regard is had to non-monetary harm.*"

32. The Court's approach should be as follows. First, the Court must decide whether the repudiation of the promise is unconscionable. Usually it will be, but there may be special circumstances meaning it is not; *Guest* [74]. Secondly, if it is unconscionable, the starting

point is to start with the assumption that the simplest way to remedy the unconscionability is to hold the promisor to the promise; *Guest* [75].

33. If the promisor asserts and proves (the burden being on him for this purpose) that specific enforcement of the full promise would be out of all proportion to the cost of the detriment to the promisee, then the court may be constrained to limit the extent of the remedy; *Guest* [76]. However, where the reliant detriment has had lifelong consequences, a detriment valuation will generally fall upon stony ground. It is where the detriment is specific and short-lived, and in particular, shorter than the parties are likely to have contemplated, that it is likely to serve a useful purpose; *Guest* [72]. The question of proportionality is not to be carried out on the basis of a purely financial comparison (*Guest* [73]):

"Take the example where the daughter spends the whole of her working life on the family farm, working at low wages, in the promised expectation that she will inherit it. The question whether giving her the farm is disproportionate is not to be answered in such a case simply by comparing the monetary value of the farm with the net present value of the wages differential. Modern capital values of farmland are typically so high that the farm would always be worth much more than any valuation of the detriment. But that does not make a full in specie enforcement of the expected inheritance disproportionate. It will be proportionate (or at least not out of all proportion) because the daughter has fulfilled her part of the family understanding, and it is only fair and proportionate that the parents should now perform theirs."

CONSTRUCTIVE TRUST

34. A claim in constructive trust is pleaded in Michael's Amended Particulars of Claim, based on the same facts as are relied on for the claim in proprietary estoppel. It is alleged that a common intention constructive trust has arisen because Michael has acted to his detriment in reliance upon a common intention shared by him and John that he would have an interest. There is a fundamental problem with this claim in that a claim for a declaration of common intention constructive trust is a claim for a declaration that Michael was a beneficial co-owner of the farmland with John during John's lifetime. Whereas Michael's case is clearly that he is not an owner of the land but had an expectation of an inheritance of it which he has not received. Mr Jourdan chose to concentrate his submissions on proprietary estoppel and I do not propose to say anything more about the claim in constructive trust.

APPROACH TO THE EVIDENCE

35. A number of witnesses were called to give evidence of their recollection of events, conversations and beliefs in the past. Memory plays tricks on people. It is perfectly possible for an honest witness to have a firm memory of events which they believe to be true, but which in fact is not correct. There is now a considerable body of authority setting out the lessons of experience and science on this issue; see for example *The Ocean Frost* [1985] 1 Lloyd's Rep 1 at 57, *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3650, *Lachaux v Lachaux* [2017] EWHC 385, *Carmarthenshire County Council*

v Y [2017] EWFC 36, *R(Dutta) v GMC* [2020] EWHC 1974. The approach I take to the assessment of the oral evidence is to weigh it in the context of the reliably established facts, including those to be distilled from contemporaneous documentation, the motives of the protagonists, the possible unreliability of human memory and ultimately, the inherent probabilities.

36. On behalf of the Claimant I heard oral evidence from Michael, his wife Anita, their sons Jack and Joseph, Heffin Lloyd Davies, Timothy Russ, Thomas Hindmarch, Alwyn Haynes, and Michael Laffey. In addition there were witness statements from Richard Haynes, Nigel Mason, Julie Haywood, David Goodwin, Amanda Barnard and Hope Rose which were either introduced under CPR 33.2 or agreed. On behalf of the Defendants I heard evidence from Jane and her former husband Richard, James Wesson, Josephine Spencer, Caroline Flower, Paul Spence and Graham England. I did not hear oral evidence from Penny but there were two witness statements from her which were introduced.

37. There was some relevant contemporaneous documentation in the shape of (a) the various files of Duncan & Toplis entities who had acted as the partnership accountants for many years, who drafted John's 2018 Will, and who were initially instructed by Michael, Jane and Penny to act in the administration of the estate (b) the Roythornes will files and their file when Tim Russ acted for Michael and Jane (c) partnership accounts and other partnership documentation.

38. I make specific comments about the witnesses and their (relevant) evidence as it arises during this judgment. I will however say something about Michael's evidence here. In the end his case is based on things he says were said to him by his father when no one else was present, and what he thought and did as a consequence. As can be seen from the list of witnesses, others were called to provide snippets of evidence which might lend credence or might undermine Michael's case, but only Michael is now alive to give evidence of what was said to him by John. John is not here to give his side of the story. Jane and Penny do not believe Michael, but they were not there when the statements were said to have been made. Careful scrutiny of Michael's evidence is therefore necessary.

39. Michael has multiple sclerosis. He had difficulty reading and required assistance in the witness box. He is clearly a man of few words and his answers in cross examination were often unhelpfully monosyllabic or terse. His was not carefully prepared or thought through evidence. He was not familiar with the documents in the bundle. He was adamant that certain events had happened but quite often the documents showed that they could not have happened in the way he remembered. For example, he was convinced that Penny had prematurely left the first meeting at Duncan & Toplis when the 2018 Will was read, but the file, and Anita's evidence, suggests it was the second meeting. He was adamant that Jane had stormed out of the first meeting with Mr Russ at Spalding but the attendance notes do not support that. In the end Mr Jourdan was forced to drop many pleaded particulars of alleged assurances and detriment because Michael's evidence did not support them. This was in part, but not always, because he also had a tendency to accept points which were put to him by Ms Shea too readily and often without, it seemed to me, fully comprehending what was being put to him. Nevertheless having considered all the evidence I am satisfied that he was an essentially honest witness telling the court what he remembered as he (now) remembered it, although his memory of events particularly as to when things occurred and in what sequence was very unreliable.

ASSURANCES

When first raised?

40. A considerable amount of evidence and cross examination was focussed on when Michael first raised the existence of the assurances he says he was given. This is said to be relevant to whether the assurances were in fact given, to their quality, and to the credibility of Michael's case. The Defendants' say that, although the 2018 Will was read to the family on 29 October 2018, Michael did not raise the existence of the assurances until he had read the Will file (and discovered the previous Will had left him the farmland) on 10 or 11 March 2019. Michael disputes this saying that he had told Jane repeatedly that he had been promised the land, and that he also told Mr Russ of Roythornes soon after he was instructed in December 2018.

41. Initially it was proposed that Duncan & Toplis Probate Services who had prepared the 2018 Will would handle the administration of the estate. They conducted a reading of the Will on 29 October 2018 at which Michael, Jane and Penny were present. It soon became clear that there was likely to be disagreement between Penny on the one hand and Michael and Jane on the other as to the administration of the estate. Sills & Betteridge informed Duncan & Toplis Probate Services that they were instructed by Penny on 19 November 2018 and wrote a long letter raising a number of issues in relation to the proposed administration. On 6 December 2018 Lindsey Atterbury at Duncan & Toplis informed the siblings that Duncan & Toplis could only act if there were no contentious issues. There was a further meeting on 7 December 2018 initially with Michael, Jane and Penny although Penny may have left this meeting almost immediately bringing it to a conclusion and Duncan & Toplis ceased acting in the administration. There was a further meeting at Duncan & Toplis Accountants between Jane and Michael and Tom Hindmarch on 25 January 2019.

42. Michael did not complain at any of these meetings of his unhappiness with the provisions of the 2018 Will.

43. Jane and Michael instructed Roythornes to act for them. They met with Tim Russ of Roythornes on 19 December 2018 for 45 minutes and he advised that either an independent third-party administrator should be appointed or that a mediation take place. Mr Russ then corresponded with Penny's solicitors along those lines. There was a further meeting on 22 January 2019 for 1 hour and 15 minutes and a third on 31 January 2019 for 42 minutes. Roythornes and Sills & Betteridge agreed to a mediation which was scheduled for mid-March. In advance of that mediation the Will file in relation to the preparation of the 2018 Will was produced and provided to Jane and Michael. There is no dispute that after reading the Will file on 10 or 11 March that Michael decided that he did not wish to go ahead with the mediation and wished to investigate a proprietary estoppel claim against the estate. Roythornes continued to act for Jane and Michael until 13 March 2019 when Jane consented to Roythornes acting for Michael alone.

44. Roythornes' file while acting for both Jane and Michael has been produced. Mr Russ produced two witness statements relating to the period when he acted for Jane and Michael and he gave evidence at the trial.

45. Too much time has been expended before and during the trial in trying to make sense of the Roythornes file. In 2018 and 2019 Roythornes maintained two versions of a client

file. The first was an electronic file and the second was a hardcopy file. Attendance notes and outgoing letters would be filed electronically by the secretary preparing them. Hard copies were then printed off and left in a tray for filing by a filing clerk. Mr Russ had a habit of using notepaper picked up at conferences and events to make manuscript attendance notes – in this case one on Outer Temple Chambers notepaper and one on Mishcon de Reya notepaper – and such manuscript notes were left for filing in a similar way. The metadata suggests that manuscript attendance notes were also routinely scanned and kept as part of the electronic file.

46. Roythornes disclosed a scanned copy of the hard copy file in October 2022. Mr Russ made his first witness statement on 11 January 2023 after refreshing his memory from the hard copy file. Because the file did not contain documents which Jane expected to see, Roythornes were asked to disclose the electronic file and its metadata which they purported to do on 21 April 2023. At about the same time Mr Russ prepared his second witness statement on 19 April 2023 after having read the electronic file. He explained that the hard copy file had not contained a number of material documents which were on the electronic file and his first statement therefore did not correctly record a number of matters. In particular he had wrongly stated that he had had only two meetings with Michael and Jane when there had in fact been three.

47. Even at this stage, the disclosure of the Roythornes file was not complete. A further 18 documents made their way into the trial bundles and upon being queried by Thrings resulted in the production of a Supplemental Disclosure List on 8 June 2023 under cover of an email saying that they had been "*previously overlooked as a result of the disorganisation of the historic file*". Mr Russ declined to provide any further explanation in correspondence. When asked to provide an explanation in cross examination he said he could not do so because he had not looked into it, although over a week had passed since the Supplemental Disclosure List. The failure to make proper disclosure was, he said, purely down to incompetence.

48. Mr Russ' witness statement contains a Statement of Truth and a Confirmation of Compliance in the form required by paragraph 4.1 of Practice Direction 57AC and signed by him which includes the statement "This witness statement sets out only my personal knowledge and recollection, in my own words". Paragraph 4.3 requires a Certificate of Compliance to be signed by "the relevant legal representative" which is defined as a legal representative authorised to conduct litigation and who has had the responsibility for ensuring that the purpose, proper content and proper practice in preparation of a witness statement have been explained to and understood by the witness. Mr Russ signed that too.

49. His first witness statement purports to set out his specific recollections over and above what is contained in the documents on the file. In particular:

    i) He sets out a specific recollection of the first meeting on 19 December 2018 ("*Jane really conducted the meeting on behalf of the clients and gave most of the instructions to me, Michael said very little*"). He sets out the circumstances in which Michael "*clearly told me at our first meeting that the will did not reflect the promises that had been made to him*" and that "*Michael was complaining about the will not making provision for the land not being his right from the first meeting*". . He says this happened at the end of the meeting after Jane had left and this is why it was not included in either his typewritten or manuscript attendance note and also

why he returned to the topic in the second meeting. "*I can recall*" he said "*after that meeting …he was very unhappy with the will because, he maintained to me that the land which his father owned had always been promised to him*" and "*I remember him saying to me at the end of the meeting in December 2018 that he would see how it went and otherwise he was going to bring a claim*". He says he should have documented the discussion at the end of the meeting in his December 2018 attendance note.

ii) He explains an undated manuscript attendance note on Mischcon de Reya headed notepaper ("the Mishcon attendance note") which records "*Father told you he would make sure you could keep the land and farm it*" as a note of what Michael said to him at the second meeting on 22 January 2019. He states that on that occasion he gave "*clear advice*" to Jane and Michael that Michael may have a proprietary estoppel claim or 1975 Act claim and purports to set out his recollections of Jane's reaction.

iii) He expresses a specific recollection of Jane leaving a meeting: "*I recall that either at [the second] meeting or the December 2018 meeting (I cannot be sure which) Jane left the meeting and said that she was going to get her own solicitor who she described I thought oddly as "a proper solicitor*".

50. This evidence was all consistent with, and apparently corroborative of, the evidence Michael gave in his witness statement which was made on the same day.

51. When he was called as a witness he was asked whether subject to the correction of his first witness statement (as to there being three and not two meetings) the contents of his first and second witness statements were true to the best of his knowledge and belief. He answered yes.

52. In cross examination, however, he made clear that he had only two specific recollections. One was of having a conversation with Michael, about a possible estoppel claim but save that they were standing up at the time and Jane was not present, he could not remember the circumstances such as when that was or where. The second was that he recalled Jane being "huffy" and getting up and leaving a meeting but he could not remember which meeting that was or what she said. Everything else in his witness statement he accepted was inference, supposition and reconstruction from a badly organised file of matters of which he had no recollection whatsoever.

53. This means that contrary to his Confirmation of Compliance Mr Russ' witness statement does not set out matters within his personal knowledge and recollection. Also contrary to the Confirmation, it does not make clear how well he recalls important matters, such as when Michael first mentioned the assurances on which he now relies. Indeed it wrongly suggests that Mr Russ had a specific recollection that this occurred at the first meeting when in fact he did not. His evidence on what occurred at the second meeting is not, as it appears to be, evidence of his personal recollection that he "*gave clear advice*" about a proprietary estoppel claim and discussed the consequences with Jane. It is simply reconstruction and speculation as to what must have occurred – which is one of the very things Practice Direction 57AC is intended to prevent. It was simply untrue to say of Jane leaving a meeting "*I recall that … she was going to get her own solicitor who she described I thought oddly as "a proper solicitor".* In fact he accepted that he had no such recollection of her saying those words. He could not explain why this was in his

witness statement. He was unable to account for why he gave evidence in his witness statement of his memory or recollection of things when he in fact had no such memory or recollection.

54. In her closing submissions Ms Shea pulled no punches on the issue of Mr Russ' evidence. Mr Russ, she submitted, had said things in his witness statement which he knew were not true in order to bolster his client's claim. It was, she submitted, dishonest evidence. On the evidence that was a perfectly proper submission. However, it was not expressly put to Mr Russ that he had given dishonest evidence and he did not have an opportunity to address that explicit contention. It would not be fair, and I decline, to make any findings that the witness statement contained dishonest evidence but I will make the following points about Mr Russ' witness statement:

    i) A witness statement in this form should never have been prepared by Mr Russ;

    ii) He should not have put a Statement of Truth or a Confirmation of Compliance to it;

    iii) He should not have put a Certificate of Compliance to it. I heard no argument on this point but it seems to me to be quite wrong for a solicitor who is a witness to self certify that he has "*discussed with and explained to*" himself the purpose, proper content and proper practice in preparation of a witness statement as required by paragraph 4.3 of the Practice Direction. Paragraph 4.3 envisages that the Certificate of Compliance will be given by a different person to the witness who has themselves a separate responsibility for ensuring that the witness has understood his or her obligations. If there is no different person within the meaning of the Practice Direction then paragraph 4.4 makes clear that an application can be made without notice and without a hearing for dispensation from the obligation to have a Certificate of Compliance.

    iv) He should have corrected his witness statement at the earliest opportunity, first in correspondence and then by filing a corrective witness statement.

    v) He should never have allowed his witness statement to stand as his evidence in chief without correction.

55. Mr Jourdan encouraged me to accept what remained of Mr Russ' evidence – namely the two memories, as honest and reliable evidence. I am prepared to accept the evidence Mr Russ gave in cross examination as to his two memories as honest but in the circumstances I treat this evidence with considerable wariness as to its reliability.

56. In the circumstances it falls to me to make sense of Roythornes' disorganised file as best I can, shorn of Mr Russ' speculation.

57. There is no record of Michael emailing Roythornes raising his grievances. There is no written advice by Roythornes in letters or email about a potential proprietary estoppel claim. There are three face to face meetings between Jane, Michael and Mr Russ and a handful of attendance notes of telephone calls. There is no record of anything being said to Mr Russ by Michael in either the manuscript notes or the typed notes of the first

meeting on 19 December 2018. Nor is there any record of such a discussion in the third meeting on 31 January 2019.

58. However, at the second and longish (1.25 hour) meeting on 22 January 2019 the typed attendance note records that Mr Russ spent time "*Explaining to MS that he may have a PE claim and/or a claim under the 1975 Act*". It is clear therefore that there was *some* discussion at that meeting or before which made Mr Russ think that Michael had a potential proprietary estoppel claim and/or a claim under the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act"). In relation to Michael a claim under the 1975 Act would have been a claim that the 2018 Will failed to make reasonable financial provision for his maintenance. The facts giving rise to a proprietary estoppel might also give rise to a potential claim under the 1975 Act. This was not a reference to some standard generic spiel about the law given at an introductory meeting as Ms Shea sought to suggest – that would have been given at the first meeting on 19.12.18. Further, the note is clear that this was specific advice addressed to Michael (and not Jane).

59. That view (that Michael had raised the assurances by or at the 22 January 2019 meeting) is inadvertently corroborated by Jane's evidence. Although she maintained that Michael did not mention the promises or assurances by his father at any of the meetings with Mr Russ, she says that she left this meeting annoyed because Mr Russ had only been interested in talking to Michael, that he mentioned the Inheritance Act and went on at length about previous cases involving farmers and their children which she now knows to be proprietary estoppel claims. So much so she lost interest in the conversation and packed her things away in her bag before the meeting was over, although she says she did not leave early. Her former husband Richard Flower confirmed that Jane had come back from at least two meetings with Mr Russ unhappy with the advice he had given. It seems to me that there must have been things said by Michael to prompt that conversation between him and Mr Russ and things said by Michael during that conversation to encourage Mr Russ to give the advice he did about claims of proprietary estoppel and under the 1975 Act.

60. It is further corroborated by the events on 12 and 13 March after Michael had read the Will file. The 12 March note of a brief call (up to 1 six minute unit) of telephone conversations between Mr Russ and Michael says

"*Telephone in Mr Spencer who, now he has read the papers from Duncan & Toplis, was absolutely livid and wanted to <u>reconsider</u> his Proprietary Estoppel claim. He said the file made it clear that his father had been misleading him as to his intentions.*"[underline added].

This suggests Michael had already received advice about "*his Proprietary Estoppel claim*" and wished to reconsider it. The fact that the call is brief and the note does not spell out what Michael says his father had told him, tends to suggest that none of this was coming as a surprise to Mr Russ as it had already been discussed.

61. The next day Mr Russ returned Michael's call and they spoke for up to 12 minutes. The attendance note records that

"[Michael] now considers having read the papers, that he should be pursuing a proprietary estoppel claim. He had been promised the farm all his life and has worked for low wages for a large period before he went into partnership on the basis that he

would inherit the farm. His sister is going to consultant [sic] somebody else and has no difficulty with TR acting for him".

Jane subsequently emailed Mr Russ to say that she and Michael had spoken, she understood the potential for a conflict of interest, she agreed to Mr Russ continuing to act for Michael and she would engage another solicitor. The proposed mediation with Penny was called off.

62. So, by the time Mr Russ called him on 13 March Michael apparently understood the nature of a proprietary estoppel and had decided he should be pursuing such a claim. He had explained that to Jane who understood the conflict of interest and the need to instruct someone else. The mediation was cancelled. It is inherently improbable that Michael was able to make this firm decision, or Jane to understand it, if there had not been earlier discussion of such a claim, and advice given by Mr Russ about it. That further supports the view that such a claim was discussed at some length in the second meeting on 22 January 2019, and if so it is inherently likely that this happened and the discussion continued because Michael said he had expected to inherit the farm because of things his father had said to him.

63. There is an undated attendance note on Mishcon de Reya notepaper on which Michael relies. In it Mr Russ records "*Father told you he would make sure you could keep the land and farm on it*". Mr Russ presented this document in his witness statement as the manuscript notes he took at the second meeting on 22 January 2019. However when pressed in cross examination this turned out to be speculation based on the fact that document was filed in the hard copy file next to the typed attendance note of 22 January 2019. Looking at the metadata of the one other manuscript note (21 December 2018 meeting, uploaded 2 January 2019) and the supposed filing practice at Roythornes one would therefore expect the Mishcon note to have been uploaded to the electronic file on or soon after 22 January 2019. In fact it was uploaded on 26 April 2019 by which time Roythornes were acting solely for Michael in the pursuit of his claim. Although the metadata in the trial bundles may not be complete, all other documents on the electronic file appear to have been uploaded by 13 March 2019 and this is the solitary document which was uploaded on 26 April 2019. Mr Russ speculated that it had been uploaded when the file for Jane and Michael had been closed, but there is no explanation of why this should have occurred so long after 13 March 2019 when Roythornes were disinstructed by Jane, or why that would have provoked someone to go through the hard copy file, compare it with the electronic file, identify the Mishcon attendance note as missing from the electronic file and then upload a copy – all apparently without reference to Mr Russ the fee earner. Much more likely it is a note of a meeting between Mr Russ and Michael shortly before 26 April 2019 by which time Roythornes were acting for just him, which was left by Mr Russ in a tray for filing by a filing clerk, and which has been uploaded to the wrong electronic file. When this was put to Mr Russ he pointed to the fact that the note was headed "*Spencer/Flower*". This he speculated must have been because his clients were still Michael Spencer and Jane Flower. This is a very thin basis for trying to date the attendance note. There is no reference in the note to who was present at the meeting, and no suggestion in it that Jane was present or said anything. There is no date or firm client reference number. There is no record of how long the meeting took. Looking at the matter in the round and having regard to Roythornes' disorganised record keeping and the fact that Mr Russ has no actual memory of what was said at the

meeting I place no weight on the Mishcon document as evidence of what was said on 22 January 2019 by Michael.

General assurances

64. Michael's pleaded case is that Michael was told throughout his life words the gist of which was that he would inherit the farm. Michael's evidence is that consistently throughout his life his father repeatedly told him that he would "*become the farmer and take on the farm after him*". While Michael could not recall a specific conversation his evidence was that in their frequent arguments, his father would say something like "*What is your problem, it will all be yours one day*" or "*You are going to inherit it so I don't know what your problem is with the amount of money you are earning*" or "*What is your problem? Because you've got this when it is all over and I've gone. You're carrying on with it and then the lads will take over from you*". Michael says that his father made it clear that the harder he worked, the more he would inherit, saying words along the lines of "*You work hard. It will all be yours one day*".

65. The Defendants' case is that Michael's evidence that these assurances were given in these terms should not be accepted. A significant part of their attack is based on the fact that Michael, they say, did not mention to them these assurances after their father's death on 18 October 2018 until his letter of claim on 19 May 2019. The inference they seem to invite is that Michael's evidence is concocted, or exaggerated, or a false memory after the receipt of advice from Roythornes as to the nature of a claim in proprietary estoppel.

66. I accept Michael's evidence that these statements were made.

67. As discussed above, the documents suggest that Michael raised the assurances with Mr Russ on or before 22 January 2019 in the presence of Jane. This is the second meeting with Mr Russ. If anything, the mention of the assurances to Mr Russ early in his retainer, and so as to prompt advice on proprietary estoppel by Mr Russ, corroborates Michael's evidence that such assurances were made. The fact that this was discussed in Jane's presence undermines her evidence that Michael had never mentioned the assurances to her before 19 May 2019. I accept Michael's evidence that he had.

68. I do not think there is anything significant to read into the failure to mention the assurances to other advisors, such as Duncan & Toplis Probate Services before then. Duncan & Toplis Probate Services had prepared the 2018 Will and were acting for the executors . Until advised about the nature of a proprietary estoppel claim few lay people would think that there might be a remedy available at law for a son who had been foolish enough to rely on oral assurances made by his father. A son faced with "*the soul destroying, gut wrenching realisation of being deprived*" (*Guest* [11]) for which he thinks he has no remedy and only himself to blame can react in a number of different ways. Embarrassed silence is one of them.

69. He was tested in cross examination as to whether "the farm" was a reference, particularly in the early days, only to the land subject to the Buckminster tenancy. He was clear, and I accept, that he was given to understand by his father than it meant the whole farm, meaning all John's land that was being farmed and which Michael was working on. It

was he said worked on "as all one block" with no distinction between land which was rented and land which was owned.

70. He was cross examined at length as to whether John had used the word "*inherit*". Michael's evidence was that in later years, after John had acquired the land at Stainby, in their more heated arguments John would use the word "*inherit*". It would be a challenge for anybody to remember the specific words used in a number of heated conversations over the years. I do not consider there is any magic in whether the word "*inherit*" was used. The important question is whether the words used were reasonably understood by Michael as meaning he would inherit the farmland, as opposed to say, the farm business as operated by the partnership. I find that looking at the other evidence the inherent probabilities are that whatever the words used between father and son, John intended to communicate to Michael that he would inherit the farmland and Michael reasonably understood that to be what his father was saying.

71. These conclusions as to what John intended to communicate and what Michael reasonably understood from John's statements are consistent with the other evidence.

72. From 1993 to 2018 John's Wills did indeed leave Michael the farmland and it is therefore likely that in his conversations with Michael about succession to the farm that John intended to communicate, and did communicate to Michael that Michael would inherit the farmland. It is unrealistic to think that John intended in the assurances he gave to Michael to refer either to the Buckminster tenancy or the farming business when he had in fact decided to leave the farming business and the farmland to Michael. In theory it is possible that the words he used might on occasion have been ambiguous or equivocal, but we are considering a course of dealing between a father and a son, who worked together and knew each others' ways and manner of communicating. In my judgment it is unrealistic to think that in repeated and consistent assurances by John he will have failed to communicate his intent to Michael.

73. There were also a number of witnesses who understood from their conversations with John that Michael was to inherit the land. Nigel Mason, an agronomist who worked for the Spencers for more than 20 years gave agreed evidence that "*on two occasions John said to me that he had sorted out the future of the farm and that Michael would be having the land and, assuming he had obtained enough money from his gravel business, he would leave his money from the gravel business to his daughters*". Mr Mason clearly understood that Michael was to inherit the farmland. Julie Haywood, a neighbour, whose evidence was also agreed expressed surprise that Michael had not left the farmland to Michael on his death because "*he regularly told me during the course of our discussions that his plans were that Michael would be taking on the farm when he died*". Whatever the words used by John, Ms Haywood clearly understood him to mean that Michael would inherit the land. David Goodwin who worked on a neighbouring farm and who did odd jobs for John provided a witness statement which was treated as agreed evidence. He recounts a regular exchange when he declined payment for the odd job and joked that John should instead remember him in his Will. John would respond "*You will have to get it off Michael because it is all his one day*". In the context of a discussion of what John would do in his Will, that can only have been intended by John to mean that Michael would inherit the farm and land.

74. If John gave others to understand that Michael was going to inherit the land, it is likely that he also gave Michael that understanding.

The Colsterworth Truck Stop

75. Michael also relies on things that were said by John when in the mid 1990's, Michael wanted to buy a truck stop providing fuel and refreshments to HGV drivers at Colsterworth. This was owned by Heffin Davies who was a friend of the Spencers and who wanted to sell as he was emigrating to New Zealand. John was firmly against this venture and made this clear to Michael. Michael's evidence, which I accept, was that his father told him that if he pursued the venture he was "*finished*" and he would be "*out of the farm*". John and Jean also made clear to Mr Davies in a series of conversations around the kitchen table when he popped in for a visit that they did not want him to sell the truck stop to Michael. Mr Davies gave evidence from New Zealand and I found him to be an honest witness. I accept his evidence that what was said in his witness statement was true and he expanded on aspects of it in cross examination. His evidence was that John and Jean made clear that they wanted the farm to stay in the Spencer family, to pass to Michael and then on to his children. They clearly perceived the truck stop as a threat to the farm and that plan. In his witness statement, which stood as his evidence in chief, Mr Davies said that John told him that if Michael showed any interest in another business he would take him out of his Will. Mr Davies therefore told Michael that he could not sell the truck stop to Michael.

The Buckminster tenancy conversation

76. At the time of the tenancy succession application in 2006-7, Michael recalls John telling him that the main reason John wanted Michael to make the application was that the Stainby land which John owned was bare land and Michael would need the farm buildings on the Buckminster estate to farm the wider land after John was gone. Michael also relies on this as an assurance.

The conversations with Michael Laffey

77. Mr Laffey was a plant hire contractor who was well known to John and Michael. After his father died he and his sister had an expensive legal dispute as to who inherited his father's land and yard. He says his legal problems were the subject of a regular conversation with John whenever he met him and he would counsel John not to let this happen on his death. His evidence was that John would tell him not to worry and "That's all sorted" and that Michael would get the farmland. Michael was present during many of these discussions and relies on these as further assurances. I accept Mr Laffey's evidence.

Unpleaded assurances and other evidence

78. There was other evidence which points in the same direction, but on which I have not placed much weight. Anita's evidence was that Michael told her in the early days of their relationship that the farm was promised to him by John and would pass on to their (then future) children. She also gave evidence of a specific conversation with John in 2016

when she says John discussed the land passing from Michael to her boys Jack and Joseph. Anita is Michael's wife. I treat her evidence with caution because I am concerned that her partisanship has tainted her evidence. I had less reservation about the evidence of Jack and Joseph who gave evidence of John's conversations with them at harvest time in 2017. Both had conversations with their grandfather encouraging them to think about their future as on the farm with their father.

Conclusions on assurances

79. I find that there were general statements made by the deceased to Michael, usually during arguments, the gist of which was that Michael would inherit the farm. They were made on many occasions. These were assurances intended to be taken seriously - they were John's means of mollifying Michael and ensuring he stayed committed to the farm (discussed further below in relation to interlinked issue of reasonable reliance).

80. There was an understanding between father and son that if Michael worked hard and committed himself to the farm then John would leave him the land they were farming on his death to continue farming. There was always a threat, that if Michael did not commit to the farm on John's terms then he would not inherit the farm. This quasi-bargain seems to me to have been more or less put into words by John at the time of the Colsterworth Truck stop venture, when one looks at the things he said to Michael and Mr Heffin Davies.

81. When they were not arguing, John made statements to others in Michael's presence, such as Mr Laffey, which will have reinforced Michael's belief that he would inherit the farm.

82. John, however, remained in control. He retained control of the land during his lifetime and Michael accepted that he could change the composition of the farmland by buying and selling parcels of land in the ordinary course of events. This is not inconsistent with the understanding between John and Michael that John would leave the farm and the farming business as it was at John's death to Michael, even if the extent of the farmland fluctuated during John's lifetime. Such fluctuations give rise to no conceptual difficulty as to certainty of the subject matter of the assurance; *Thorner* [62], [95].

John's 2018 Will

83. It now seems clear that John felt able to change his Will in 2018 and not leave the freehold farmland to Michael. In a sense this is irrelevant. As Robert Walker LJ observed in Gillett v Holt at 227:

"the inherent revocability of testamentary dispositions (even if well understood by the parties, as Mr Gillette candidly accepted that it was by him) is irrelevant to a promise or assurance that 'all this will be yours'.

If the assurance is reasonably relied upon by the promisee to his detriment, then it is too late for the promisor to change his mind. The assurance itself is initially revocable. It is the detrimental reliance which makes it irrevocable.

84. Nevertheless I will for completeness examine why John changed his settled testamentary intention of over 25 years to leave the farmland to John.

85. Graham England of Duncan & Toplis Probate Services met with John in May 2017 to review his will. At that point John had in mind giving his land (including the interest in the stone quarry) to Michael for life and thereafter to go into a trust. However, Mr England's attendance notes record that John did not know what the terms of the trust should be or what he wanted to happen after Michael's death. Mr England's evidence was that John just wanted the land to go into trust as if the trust would last forever. He had to explain to John that with a trust for life, the trust would not last forever but would end on Michael's death.

86. Mr Davies' evidence was that John felt very strongly that the land should not be sold. Anita, Jack and Joseph gave evidence of conversations in 2016 and 2017 in which John had reiterated that the land must never be sold. The idea of a trust seems to have been John's idea for ensuring that the land was never sold. At the same time there was evidence from Anita that John was making comments to her that her sons needed to step up if they were to inherit the land. Joseph's evidence was that in 2017 John told him that he would have to work harder and he and his brother would have to grow the farm with their father. Jack's evidence is that John tried to get him to commit to working at the farm, offering to give him John's 5% partnership share if he did, which Jack declined. Some of these conversations may have post dated the meeting with Mr England in May, but they show a general unease on the part of John as to what was to happen to the land after Michael's death, and whether Jack and Joseph could be relied upon to take on the farm.

87. Mr England asked Tom Hindmarch (who was John's main contact at Duncan & Toplis Accountants) to speak to John. This did not take place until 11 January 2018. Michael had been suffering from dizziness and falls for which he had been referred in November 2017 to a consultant neurologist. On 10 January 2018 Michael had been diagnosed with multiple sclerosis. Mr Hindmarch had a meeting about the farm partnership finances with John and Michael on 11 January 2018. Mr Hindmarch's note of that meeting says that Michael was clearly very stressed. On the same day it seems he also had a meeting with John without Michael which he reported on to Graham England in an internal memo dated 16 January 2018. Mr Hindmarch reported that John wanted the land he owned putting into trust for his three children and grandchildren. His witness statement says that he recalls a meeting at the farm on or about 11 January 2018 in which John said to him "*What am I going to do, Michael is going to die*". Mr Hindmarch said that in view of John's belief that Michael was going to die early he had decided to leave his land to his children rather than just leave it to Michael. Mr Hindmarch was picked up in cross examination on a small error in this part of his witness statement in which he thought this was the point at which he first referred John to Mr England, when in fact Mr England had been instructed since May 2017. I do not consider that error affects the accuracy of the rest of his evidence which I accept.

88. Michael and Anita both gave evidence that after Michael's diagnosis John became fixated and distressed with the idea that Michael was dying. He would go to their house every morning for a few weeks. He apparently wanted to discuss Michael's prognosis, and he would tell Michael he was going to die. He could not be persuaded otherwise.

89. Mr England then corresponded with John and had a number of calls with him. A draft Will was sent to John to review and he executed it and a letter of wishes on 26 March 2018.

DETRIMENTAL RELIANCE

90. It was Michael's evidence in his witness statement that "*the only reason he stayed on the farm*" with his sometimes difficult father, was because of the assurances he received that he would receive the farm. I consider that puts it too high. Michael had always wanted to be a farmer. Although in the early years, and when he was young, he received a poor wage, that changed. Over time he came to own an increasing share, eventually 95%, of the farming partnership, the farming business was successful, and Michael accumulated significant capital. Michael's reasons for staying at the farm will not have remained constant, there are likely to have been different considerations at different times as circumstances changed. Over the years, Michael had other good reasons to stay on the farm.

91. That said, I have no doubt that the assurances were a significant inducement to Michael to stay at the Farm, to work hard and to bend to John's will. There was clearly a difficult working relationship between Michael and his father, with regular arguments. Michael occasionally boiled over – an example of this hot headedness was an incident in 1986 where after an argument with John, Michael left the Farm without a word to anyone, and travelled to North Yorkshire where he found himself seasonal work as a potato picker earning good money. John and Jane travelled to Yorkshire and persuaded him to return to the farm. John knew that Michael was capable of getting angry enough over an issue to leave the farm. As observed above it was Michael's evidence that the general assurances were usually made in the context of an argument. It seems to me that they were John's way of calming down a hot headed Michael to stop an argument getting out of hand, controlling him, and keeping him on the farm – and this was on the basis that they were an effective inducement. According to Michael, John would say "*You work hard, it is yours at the end of the day*". Michael clearly regarded those statements as an inducement, describing them as "*a bribe*" and "*a carrot in front of a donkey*". While there were other good reasons for staying at the Farm, working hard and accepting his father's control of aspects of his life, the assurances were in my judgment an important reason.

92. Michael did as he was asked. He devoted himself to the farm and worked extremely hard. He describes the 19-20 hour days he worked at the time the initial Stainby purchase had been made and needed to be paid off plus the long hours and 365 day a year nature of the job. He describes spending no more than two days with his family on holiday before returning to the farm. Miss Shea says that this lifestyle may be described as the way of life of a farmer, but while I do not think it matters, in my judgment there was more than that here. Anita's evidence was that although she had been brought up on a farm, the level of work John and Michael did was much harder than she had experienced. Although Penny and Jane and some of their witnesses such as Mr Spence made disparaging comments about Michael's work ethic, it seems to me to be clear that he was expected to and did work hard and the hard work paid off, and was reflected in the profits made by the partnership. This was confirmed by the independent and unchallenged evidence from Tom Hindmarch, the farming partnership's accountant, that:

"*Michael Spencer was a very capable farmer and the results of the firm in terms of its financial performance are and were far better than many similar size farms which reflects on a very capable farming policy and extreme hard work on behalf of Michael Spencer and his family."*

93. Michael committed himself to working with his father, and subject to his control, despite their difficult relationship. He and Anita lived in a farm cottage which was cold and damp for 6 years because John would not allow Michael to take money out of his capital account to buy a house in nearby Colsterworth, insisting that he had to live on the farm. For many years John retained a tight control of the finances. When Michael was starting on the farm he was paid a low wage of £30 per week, which was significantly lower than the £50 per week paid to his sister Penny, and much lower than the farmhand Vince Mitchell, who was accommodated in a farm cottage, and was being paid £70 to £100 per week. In later years he and Anita lived frugally, John preferring to accumulate profits in the partnership (albeit on Michael's capital account) rather than permit larger drawings.

94. I do not think it matters whether Michael bent to the will of his father on all matters relied on as detriment or whether he was persuaded by his father to take the course he did. Michael was willing to accept in cross examination that there were legitimate farming or commercial reasons for John to require him to live on the farm and for accumulating money in the partnership rather than taking it as drawings. However, the constant theme of his father's assurances, was that hardship he endured now would enure for his benefit in the future, because it would all one day be his. It is no less detriment that he did so willingly rather than reluctantly.

95. There was also the Colsterworth truck stop which I think is a good example of the sort of choices which Michael has had to make. Michael was excited about this opportunity and did not think it would interfere with his work on the farm. As I have observed above in relation to Mr Heffin Davies' evidence, John and his wife did not agree. They clearly perceived the truck stop as a threat to the farm and to the plan that Michael should take it over. John's intervention prevented the truck stop proposal going any further. It is an example of Michael having to give up other opportunities and an example of him having to accept the will of his father against the express threat that if he pursued the venture he was "*finished*" and he would be out of the farm. There was some evidence that the truck stop is now a substantial and valuable venture, although it is impossible to say whether it would have been so if Michael had acquired it. It does not matter – the detriment is in the giving up of an opportunity to take a different course in life, with all the possibilities that different course may bring, both good and bad, financial and otherwise.

96. I accept that looking at the matter in the round Michael has positioned his working life in significant part on the basis of the assurances that he will receive the farm. It is impossible now to unpick what he might have done differently with his life over 40 years if there had never been such assurances.

97. That is the answer to Ms Shea's submission that far from suffering detriment, Michael in fact enjoyed substantial benefits as a result of his hard work and commitment. He undoubtedly did. He has had rent free accommodation and the payment of most of his living expenses by the partnership. Michael's capital account as shown in the last drawn partnership accounts is over £1.4m held in mainly liquid assets. The partnership also made very substantial pension provision for Michael, leaving him with a pension fund worth £745,754.03 at John's death. To the extent that he has suffered hardship, Ms Shea

says, the countervailing benefits, have eclipsed them. As Mr Jourdan says, however, where a parent promises a child a farm if they work on the farm until the parent dies, and the child does what they were asked to do, giving up the possibility of other options, and positioning their working life based on the assurances, that is likely to amount to detrimental reliance. It is not possible to put a money value on the unquantifiable detriment of committing a life to a farm and not building a different life elsewhere, nor to recreate a world without the assurances: see *Habberfield* [17 -18, 47 – 48], *Suggitt v Suggitt* [2011] EWHC 903 (Ch) and on appeal at [2012] EWCA Civ 1140.

98. As Lord Briggs observed in *Guest* the true "value" of the detriment may be impossible to assess with any confidence and prima facie where the reliant detriment has had lifelong consequences, "*a detriment valuation analysis will fall upon stony ground*". That was said in the context of assessing the proportionality of the remedy to the detriment, for the purposes of satisfying the equity. That seems to me to be an issue which is inextricably linked to the issue of assessing whether detriment has been suffered at all having regard to the countervailing benefits. There are no watertight compartments in proprietary estoppel.

UNCONSCIONABILITY

99. Unconscionability permeates the doctrine of proprietary estoppel.

100. The broad inquiry is to determine whether judged from the date of repudiation of the assurances, which in this case is the date of John's death from which date his Will speaks, it is or is not unconscionable in all the circumstances for the assurances to be repudiated. In my judgment it is. This was a quasi-bargain between father and son and Michael has done what was asked of him. As pithily put by counsel in *Habberfield*; if you get what you asked for, you should give what you offered.

101. There has been no change of circumstances justifying the repudiation of the assurances. John appeared to think Michael was dying, and appeared concerned that Michael's sons might not take on the farm after their father's death. Those were not good reasons to deprive Michael of his expectation, and in any event, John was wrong about Michael's life expectancy.

SATISFYING THE EQUITY

102. The aim of proprietary estoppel is to remedy unconscionability mainly by satisfying expectation; *Guest* [68]. The assumption is that Michael should receive what he was promised but the remedy is discretionary and flexible. Lord Briggs said in *Guest* at [80]:

"In the end the court will have to consider its provisional remedy in the round, against all the circumstances, and ask itself whether it would do justice between the parties, and whether it would do injustice to third parties. The yardstick for that justice assessment will always be whether, if the promisor was to confer the proposed remedy upon the

promisee, he would be acting unconscionably. "Minimum equity to do justice" means, in that context, a remedy which will be sufficient to enable that unconscionability question to be answered in the negative."

103. There is no dispute as to what land owned by John at his death comprised the farm ("the farmland") - it is the agricultural land and buildings owned by John that was being farmed and used by the farming partnership. It is the land shown edged red on the plans attached to the Amended Particulars of Claim.

104. There is an issue about certain quarry land. Part of the land at Stainby had the benefit of planning permission for mineral extraction. By 2016 part of this land had ceased to be farmed by the farming partnership and was being worked under licence ("**the Old Quarry**"). In 2016 John incorporated Stainby Stone Limited to receive the benefit of the quarrying royalties due under licence from the Old Quarry. John was also working on an application for permission to commence operations on the remaining land at Stainby which had dormant planning permission ("**the New Quarry Land**"). On 7 July 2020 (after his death), permission was granted. The New Quarry Land is presently being farmed by Michael along with the remainder of Grange Farm and Glebe Farm. Adjacent to the New Quarry Land is a field ("**Field 138**") which has no planning permission for the extraction of minerals but there is some hope that permission could be granted.

105. There is no dispute that the Old Quarry is no longer part of the farmland. There is no dispute that the New Quarry Land (and Field 138) forms part of the farmland. A joint expert report from Savills places a value of over £1.9 million on the 90 odd acres of New Quarry Land as at 18 May 2022. This is well in excess of its agricultural value which the report suggests was £8500 per acre at that time. The 13.3 acres of Field 138 with hope value are given a value of £143,000.

106. Mr Jourdan says this is irrelevant and Michael should get the land he was promised, irrespective of the value attributable to the minerals beneath. I do not agree.

107. At the heart of the arrangement between John and Michael was John's desire as a proud farmer from a farming family that the farming tradition continue within the family. The essence of the pact between him and Michael was that if Michael committed to taking it on he would be given the farmland so that he could continue the farming tradition. It was Michael's expectation to be left the agricultural unit so that he could farm it. It was no part of that arrangement that Michael should obtain the land so that he could unlock any non-agricultural value which the land might have. That is clear from the fact that the Old Quarry revenue was not part of the farming partnership, and the royalties were paid into a company set up for that purpose. At the time of his death John was in the process of unlocking that non-agricultural value, although permission to commence operations was only granted after his death. Had permission been obtained sooner, the New Quarry Land licensed for operation before John died, and the remaining farmland left to Michael in the 2018 Will, I do not think Michael could have complained that John had acted unconscionably, save perhaps to the extent that it reduced the viability of what was left as an agricultural unit.

108. It may fairly be said that much of the land comprised in the farm has the potential for being used for some other purpose at some point in time, which may be more valuable, such as property development, or for wind turbines, solar panels or anaerobic digesters. Field 138 is an example. The difference in respect of the New Quarry Land is that the

hope value has crystallised and was being crystalised when John died. It would be an unintended windfall for Michael if it were to pass to him.

109. For the purpose of deciding what is necessary to satisfy the equity which has arisen, it is not right to ignore what has happened since John's death. Although detriment may be judged from that date (as the date of repudiation of the assurance), the appropriate remedy has to be determined by a court of equity having regard to all the circumstances at the time at which it is called upon to satisfy the equity.

110. The provisional remedy that I have in mind is the transfer of the farm excluding the New Quarry Land to Michael. In respect of the New Quarry Land Michael will have the agricultural value of the land so that he can replace those fields if he can. The rest of the value of the land will remain part of the estate and pass in accordance with John's testamentary wishes. Looking at the matter in the round, I am satisfied it would not have been unconscionable for John to have made a Will with that effect. It does justice to Michael who gets the farm he was promised to continue the family farming tradition, or its agricultural value. It does justice to the rest of John's family as it leaves non-agricultural value which would otherwise be an unintended windfall to Michael to pass in accordance with John's testamentary wishes.

111. It was agreed between counsel that I should decide the remedy in principle and leave the fine detail to be worked out in light of the findings of fact relevant to the question of remedy. This will include who is to buy out who in relation to the New Quarry Land, and if so the appropriate valuation date, or whether it is to be sold to a third party. I will also leave open the issue of the burden of tax but will express the in principle view that Michael should bear the IHT arising on John's death on the value received by him, and the estate should bear the IHT on the value retained by it and that so far as possible the objective is to put the parties in the position they would have been if the provisional remedy had been given effect to by John in his Will. There is also an issue as to whether as a condition of the grant of equitable relief, Michael should be required to disclaim his interest in the estate, including his one third interest in the residuary estate. This seems to me to be just, but as I did not hear from the parties on this issue I will leave this issue outstanding too.

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