Neutral Citation Number: [2011] EWHC 2001 (Ch)

Case No: 8494 of 2010

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
Bull Street, Birmingham B4 6DS

Date: 28/07/2011

Before :

HHJ DAVID COOKE

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Between :

Steven J Williams (Trustee of the insolvent estate of John Owen Napier Lawrence deceased)	**Applicant**
- and -	
John Michael Walmsley Lawrence (1) **Bettine Walmsley Lawrence (2)**	**Respondents**

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Lexa Hilliard QC (instructed by **Freeth Cartwright LLP**) for the **Applicant**
Paul French (instructed by **Isadore Goldman**) for the **Respondents**

Hearing dates: 24-25 May 2011

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HHJ DAVID COOKE

HHJ David Cooke:

Introduction

1. This application is brought by Mr Williams as the Trustee of the insolvent estate of John Owen Napier Lawrence (known as Owen), who died in 1994. The trustee seeks an order that a transfer of Owen Lawrence's interest in his residential property, Westbrook Manor, Boxford, Newbury, Berkshire dated 3 April 1996 is void. He also seeks a declaration as to the extent of the deceased's interest in the property (the Trustee's case being that the deceased held a 50% beneficial interest) and orders for possession and sale so that it may be realised for the estate.

2. The respondents to the application are Owen Lawrence's executors, his son Mr John Michael Walmsley Lawrence (known as Michael) and his widow Mrs Bettine Walmsley Lawrence (whom I will refer to as Mrs Lawrence). The transfer in question was made by them as executors to Michael Lawrence, at a price of £38,250. It is common ground that if Owen Lawrence held an unencumbered 50% beneficial interest, £38,250 was very significantly less than the open market value of that interest at the date of transfer. The position of the Respondents however is that Michael Lawrence was already entitled to a 15% beneficial interest by virtue of expenditure he had made on the property, so reducing Owen Lawrence's beneficial interest to 42.5 % (with Mrs Lawrence holding a similar share) and further that the value of that interest had been very greatly reduced by the creation of a right of occupation for life of part of the property in favour of Michael Lawrence and his wife. The joint opinion of the valuation experts instructed by the parties is that the value of the whole property in January 1996 if sold with vacant possession would have been £337,500, but that if the contention as to a right of occupation is made out, the value of the whole property subject to that interest would have been £35,000. Owen Lawrence's interest of 50% or 42.5% would have been worth correspondingly less.

3. I should mention that there were originally other issues raised in the application, in relation to payments from the estate to various firms of solicitors and others who were named as Respondents. All of those aspects have either been compromised or are not pursued before me.

Background

4. Owen Lawrence was a chartered engineer. After he retired, he acted as a staff tutor for the Open University. He was also a Name at Lloyds, and it was this that led to the insolvency of his estate. Westbrook Manor was acquired in the joint names of himself and his wife in 1968. Initially, they held as beneficial joint tenants, but in 1974 he served a notice of severance of the joint tenancy and thereafter they held as tenants in common in equal shares. What motivated him to do so was not in evidence; Mrs Lawrence had no recollection of the matter. No issue arises before me as a result of it.

5. Michael Lawrence is also an engineer, specialising in computerised control systems for machinery. After attending boarding school, he commenced an engineering apprenticeship and then an undergraduate degree between 1966 and 1969. Thereafter he was employed by a variety of engineering companies, overseas and in this country. He married in 1969, and he and his wife bought a house in Chippenham in 1973. Later, his employment took him first to Hampshire and then to Leeds. His family moved with him, first to a house in Fordingbridge in Hampshire, and then to one in Huby, North Yorkshire, which he and his wife bought in or about 1981 for £36,000.

By that time, they had available £16,000 of equity, and they took on a mortgage of £20,000. In 1982 Michael Lawrence was unfortunately made redundant from his employment in Leeds. His family remained in the Yorkshire house while he took on a succession of jobs with employers in Bedfordshire and then in London.

6. In 1986 Michael Lawrence moved to work for a company based at Theale in Berkshire, not far from his parents' home at Westbrook Manor. After discussions which I will need to refer to in more detail below, he and his wife sold their property in Yorkshire and moved into Westbrook Manor in 1986 or 1987. Work was done in at that time to divide the property into two units, paid for by the proceeds realised from the Yorkshire property. Michael Lawrence also paid for the installation of a lift in the part occupied by his parents since his father particularly was becoming too infirm to be able to use the stairs. Since then, Michael Lawrence has paid a proportion of the outgoings in relation to the property, as agreed by him from time to time with his parents. It is these arrangements, and the assurances said to have been given at the time, that are said to give rise to the beneficial interest and right to occupy that are in dispute.

7. By the early 1990s it had become apparent that Owen Lawrence had suffered substantial losses at Lloyd's. In July 1991 he made a declaration to Lloyd's of his personal financial position and in January 1993 he made an application for assistance to the Members Hardship Committee. That led to an offer to enter into a Hardship Agreement, a term of which would be that outstanding liabilities to Lloyd's Central Fund (amounting to some £116,000 down to the end of 1991) would be secured by a charge taken on Owen Lawrence's 50% interest in Westbrook Manor, to be enforced after the death of himself and his wife. It was a requirement of the offer that Mrs Lawrence should consent to the charge and that Michael Lawrence should waive any interest that he claimed. This led to correspondence with solicitors acting for Michael Lawrence as to the existence and extent of that interest, if any, which was not resolved by the time Owen Lawrence died in January 1994 so that in the end no Hardship Agreement was entered into.

8. Michael Lawrence and Mrs Lawrence were granted probate in November 1994. After separate legal advice was taken on behalf of the executors on the one hand, and Michael Lawrence and Mrs Lawrence in their personal capacities on the other, the disputed transfer was entered into on 3 April 1996. The price of £38,250 was arrived at as follows. A valuation of the property was obtained from Strutt & Parker, their express instructions being to assume that Michael Lawrence and his wife were entitled to occupy the property for life. On this basis, Strutt & Parker gave a figure of £90,000 as the value in 1996. At that time, Michael Lawrence's position was that he had paid approximately £18,000 in 1986/7 for the various building works, and it was then asserted on his behalf that this entitled him to a 15% beneficial interest in the property (£18,000/£90,000 = 15%). On that basis (I say nothing at this point about its validity), Owen Lawrence and Mrs Lawrence each held 42.5 %, valued at £38,250.

9. Michael Lawrence did not pay the purchase price at that time; instead it was left outstanding secured by a mortgage on his interest in Westbrook Manor, and at the same time he and Mrs Lawrence executed a declaration of trust in respect of their interests in the property. It is accepted that the amount outstanding under that mortgage has subsequently been discharged.

10. The executors continued to negotiate with Lloyd's in an attempt to reduce the liabilities of the estate. On 24 April 1996 they made an application for "additional

debt credits", essentially a non-repayable grant to them which would have the effect of reducing the estate's total liability. On 9 July that year, solicitors acting on behalf of Lloyd's indicated in writing that they would make a recommendation to Lloyd's that sufficient credits should be granted to reduce the outstanding total liability of the estate (referred to as the "bill to finality") to £25,000. Two days later however they wrote to say that Lloyd's had not agreed the recommendation and considered the estate was able to meet its liabilities in full. It appears that Lloyd's made a further 'Settlement Offer' (not in the bundle), to which the executors responded on 24 August 1996 purportedly accepting the offer but in fact seeking to impose additional terms which would have reduced the estate's contribution still further, to £22,000. Lloyds did not accept these terms.

11. On 2 February 1999 Lloyd's wrote demanding payment of liabilities (by then in the form of an outstanding premium due to Equitas Reinsurance Limited and amounting to £327,896, including interest) and threatening that if payment was not made within 14 days Lloyds would petition for an Insolvency Administration Order in respect of the estate. A letter of 18 February 1999 gave reasons for Lloyd's position, including the statement that "Lloyd's is also particularly concerned that Westbrook Manor has been managed so as to protect it from creditors' claims against the estate." The response from the solicitors for the executors was to threaten to join the United Names Organisation, as they in fact did a few weeks later. This had the effect of deferring the presentation of a petition until November 2002, and the making of an order on that petition was itself deferred until 5 June 2009, by which time the various claims brought on behalf of Names seeking to avoid their own liabilities or have them paid by others had all been resolved in favour of Lloyd's. The Trustee was appointed by the Secretary of State in August 2009 and the present application was issued in February 2010.

The issues and the relevant law

12. The principal contentions on behalf of the defendants, on which this case turns, are firstly that Michael Lawrence and his wife were encouraged to sell the property in Yorkshire, move into Westbrook Manor with Owen Lawrence and Mrs Lawrence, to promise to look after them there and to invest their funds in the adaptation of that property in return for a promise or understanding, enforceable in equity, that they would be entitled to live in Westbrook Manor for the remainder of their lifetimes. Secondly it is said that the same promise or understanding, coupled with the payment of money for the adaptation entitled them to a beneficial interest to 15% (or such other proportion as the court might determine) in the property, in addition to the right to occupy. These facts are said to give rise either to a constructive trust or a proprietary estoppel. The Trustee disputes the creation of any beneficial interest in the equity of the property, and denies that any enforceable representation or assurance was given, or understanding reached, to the effect that Michael Lawrence and his wife would be entitled to a right of occupation.

13. As to the law, it is convenient to deal first with the position of the Trustee and the legal basis for the assertion that the transfer to Michael Lawrence is void. The trustee of an insolvent estate is in many respects in a similar position to that of a trustee in bankruptcy. The position is not however identical, and many of the provisions of the Insolvency Act1986 applying in the case of the bankruptcy of a living individual are modified in relation to the estates of the deceased by the Administration of Insolvent Estates of Deceased Persons Order 1986 (SI 1986/1999) (which I will call the "Insolvent Estates Order").

14. Section 284 of the 1986 Act, as it applies to the bankruptcy of a living individual, provides as follows:

> "284 (1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.
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> …
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> (3) This section applies to the period beginning with the date of presentation of the petition for the bankruptcy order and ending with the vesting… of the bankrupt's estate in a trustee. "

The effect of section 284 is thus said to "relate back" to the date of presentation of the petition. Transactions entered into after that date are at risk, even if a bankruptcy order is not made for some considerable time, as can happen.

15. In relation to an insolvent estate however, the period of "relation back" is even longer. Paragraph 12 of the Insolvent Estates Order provides that in such a case the period referred to in subsection (3) commences "on the date of death". In *Re Vos; Dick v Kendall Freeman* [2006] BPIR 348, also a case involving the insolvent estate of a Name, Chief Registrar Baister held that this provision meant what it said, with the result that if an Insolvency Administration Order was made at any time, all dispositions since the death of the deceased were prima facie void, even if made before the petition, and no matter how long the intervals between death and the presentation of the petition, and between presentation and order.

16. Mr French submitted that this effect was harsh, and that the executors could not fairly be criticised for actions they took before the petition was presented, when no one had in fact advised them that a ratification order should be sought. In this case, it appears, advice was taken but it addressed the position as it would have been in a bankruptcy- ie as if the disposition were made by Owen Lawrence while alive, and subsequently declared bankrupt. In that situation the risk considered was that the transaction might be set aside as a transaction at an undervalue under s339. The position under s 284 and the extended period of relation back by virtue of the Insolvent Estates Order were apparently not considered.

17. I am bound to say I do not agree that the effect is harsh in this instance. It was well known to all before and after Owen Lawrence's death that his liabilities at Lloyd's exceeded his assets, so that his estate was apparently insolvent and the interests of his creditors, principally Lloyd's, required to be properly taken into account. The propriety of the sale of the deceased's interest in the property, and the decision whether to accept or contest the contrary interests claimed by Michael Lawrence, cried out for truly impartial consideration by someone having due regard to the interests of the creditors of the estate. Instead it is clear from the contemporary documents and correspondence, and the evidence I heard, that the executors' primary concern was to escape from or minimise the claims made by Lloyds and to keep the estate assets within the family. The executors and their advisers were all too willing to accept the claims made in order to achieve this end, as they were to expend the estate assets on legal fees and other expenses to contest Lloyd's claims. If it emerges that they were not justified in doing so, any adverse consequences flow from their own

preference for family interests over those of the creditors, and not from any injustice in the law of insolvency.

18. The starting position then is accepted to be that the transfer of Owen Lawrence's interest in the property is void unless ratified. There is no pleaded claim for ratification, but it was not disputed that if I should conclude that the price paid was a proper one for the interest transferred (the onus being on the respondents) I should make a ratification order.

19. Insofar as the respondents' position is based on constructive trust, Mr French accepts that the starting point is that the equitable interests in the property are presumed to follow the legal interests (see *Stack v Dowden* [2007] UKHL 17) and that the onus is on the respondents to establish that this position has been varied in some manner. He relies upon a common intention constructive trust, and accepts that in order to establish that he must show either an agreement between the relevant parties (which in this case would be Owen Lawrence and Mrs Lawrence on the one side and Michael Lawrence on the other) firstly that Michael Lawrence should have an interest in the property, and secondly as to the amount of that interest. The agreement as to either of these matters, he submits, may be express, if there is evidence of actual discussions and agreement between the parties, or a matter of inference from the conduct of the parties and surrounding circumstances. It would also be necessary to show detrimental reliance on that agreement in order that a constructive trust should arise.

20. This of course would be a case in which, if the respondents' contentions are correct, the beneficial interests established when the property was purchased by Owen Lawrence and Mrs Lawrence would have been varied by subsequent events. It was accepted that in principle such a variation is possible; see the decision of the Court of Appeal in *James v Thomas* [2007] EWCA Civ 1212, in which Sir John Chadwick, with whom the other members of the court agreed, said this:

> "19 …It is said that, as a matter of law, the common intention may be formed at any time before, during or after the acquisition of the property; and that the common intention may be inferred from evidence of the parties' conduct during the whole course of their dealings in relation to the property. For my part, I would accept each of those propositions of law…
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> 24 …More pertinently, if the circumstances so demand, a constructive trust can arise some years after the property has been acquired by, and registered in the sole name of, one party who (at the time of the acquisition) was, beyond dispute, the sole beneficial owner: *Gissing v Gissing* [1971] AC 886, 901D-E, *Bernard v Josephs* [1982] Ch 391, 404E-F. But, as those cases show, in the absence of an express post-acquisition agreement, a court will be slow to infer from conduct alone that parties intended to vary existing beneficial interests established at the time of acquisition."

21. The distinction between the two questions that the court must answer, firstly as to whether the parties agreed that a person who is not a legal owner should have a beneficial share at all, and secondly, if they did so agree, what they agreed or must be taken to have agreed would be the extent of that share, must always be borne in mind. The answer in a particular case is relatively easy if the court is able to find an express

agreement between the parties in relation to both questions. Difficulties arise however when the evidence does not show that the parties have expressly discussed and agreed between themselves as to one or both of the matters in issue. The question then is whether the court is prepared to infer an agreement from the parties' conduct (or even whether the court can or should impose its own answer by determining what it considers to be fair and imputing to the parties an intention that this should be the result) It is clear from the authorities that the court takes a much stricter approach to the inference of agreement in relation to the first question than it does to the second. In a passage often quoted from the judgment of Lord Bridge in *Lloyds Bank plc v Rosset* [1991] 1AC 107, he said:

> "The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.
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> In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do. "

22. There has been much debate, both in academic circles and in reported decisions, whether it is correct to say that as a matter of law the only matter of conduct which will lead the court to infer an intention that a non-owner should acquire a beneficial interest (as distinct from the question of the quantum of his interest, once it is established that it is agreed that he should have one) is the payment by that person of a financial contribution to the purchase price. In *Stack v Dowden*, Lord Walker said this:

> "26 Lord Bridge's extreme doubt "whether anything less will do" was certainly consistent with many first-instance and Court of Appeal decisions, but I respectfully doubt whether it took full account of the views (conflicting though they were) expressed in *Gissing v Gissing* [1971] AC 886 (see especially Lord Reid, at pp 896g-897b, and Lord Diplock, at p 909d-h). It has attracted some trenchant criticism from scholars as potentially productive of injustice: see Gray & Gray, Elements of Land Law, 4th ed, paras 10.132-10.137, the last paragraph being headed "A More Optimistic Future". Whether or not Lord Bridge's observation was justified in 1990, in my opinion the law has moved on, and your Lordships should move it a little more in the same direction, while bearing in mind that the Law Commission may soon come forward with proposals which, if enacted by Parliament, may recast the law in this area."

although it was not necessary for their Lordships to move the law on in that particular case, which was concerned with the quantification of an admitted interest and not the establishment of a disputed interest.

23. Commonly the question arises in the context of the purchase of a home by a cohabiting couple. In such a case, the question is whether, if the property is registered in the name of only one of them, it is intended that the other should nevertheless have an interest. The relevant intention, if any, is likely to have been formed at the time of the acquisition and in the context of their shared intention to live together in the property. In such circumstances, contributions by each of them to the purchase price readily give rise to the assumption that the beneficial ownership will be shared. There may well be other matters of conduct in relation to the way they arrange their affairs in respect of the property which lead to a similar inference. It does not necessarily follow that the same aspects of conduct would give rise to the same inference in the very different situation where one party has an established legal and beneficial ownership of the property but it is suggested that this position has subsequently been varied. Although it appears to be a popular assumption that the spending of money by one person on property that he or she does not own by itself gives rise to a beneficial interest in the property, that is not so as a matter of law, nor is it in my judgment a matter which necessarily or even readily, without more, leads to an inference that the creation of a beneficial interest is intended. Miss Hilliard submitted that there is no reported case in which such an inference has been made. Certainly Mr French did not cite any such case to me.

24. Once the first hurdle is crossed and it is found that some beneficial interest has been conferred, the question moves on to the quantification of that interest. On this question, the court is much more ready to make good by inference any gaps in matters that the parties have discussed and agreed between themselves. On this point, Chadwick LJ said in *Oxley v Hiscock*:

> "in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have-and even in a case where the evidence is that there was no discussion on that point-the question still requires an answer. It must now be accepted that (at least in this court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And in that context,

> 'the whole course of dealing between them in relation to the property' includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home"

25. That passage was quoted with approval in *Stack v Dowden* both by Lord Walker and by Lady Hale, although the judgments given have not settled the debate as to the extent to which the court is permitted to impute an intention to the parties which they did not express and cannot on the evidence be inferred actually to have had. That is apparent from the subsequent decision of the Court of Appeal in *Kernott v Jones* [2010] EWCA Civ 578, which case is at the time of preparing this judgment awaiting decision on appeal to the Supreme Court.

26. Mr French puts the case alternatively in terms of proprietary estoppel, but realistically accepts that this takes it no further, since it is on the facts a case of reliance on an alleged express promise of the grant of an interest, rather than acquiescence by the owner in the face of action taken in a mistaken belief as to the prior existence of an interest.

27. The same principles apply, as Mr French accepted in his skeleton argument, in relation to the question whether Michael Lawrence (and/or his wife) was granted an equitable interest by way of a right of occupation and, if so, the extent of that right-whether for their lives or some other period. It is a curiosity remarked on by Ms Hilliard that although it is alleged that Mrs Michael Lawrence was a joint owner of the funds used to pay for modifications at the property, no allegation has been made by her or anyone else that she acquired any beneficial interest in the property, and that although it is said that she as well as Michael Lawrence was given a right to occupy, she has not sought to become a party in order to vindicate that right, nor even given evidence in support of the interests claimed by her husband.

28. Finally in relation to matters of legal principle, Mr French reminds me of the remarks of Baroness Hale in *Stack v Dowden* that in law "context is everything", and that the inferences to be drawn from conduct in a domestic setting may be very different from those appropriate in a commercial setting. The context here is not that of a cohabiting couple, but it is nevertheless a family context and the nature of the relationships between the parties is an important element when construing what they intended by their words and actions.

The evidence

29. I now turn to the witness and documentary evidence. The sole witness for the applicant was Michael Locke, a director of the trustee's firm who has had the principal day-to-day conduct of the insolvent administration. He has considerable experience of the administration of the estates of insolvent Names, but of course no direct knowledge of the transactions that took place in the 1980s and 1990s. His evidence was therefore in the main directed to the identification and production of relevant documents. The two respondents themselves gave evidence, and they also called Mr Andrew Johnson, a former partner in the solicitors firm of Batt Broadbent who acted for Michael Lawrence in 1993 in relation to the assertion of his interest in the property, but was also a near neighbour of Mr and Mrs Michael Lawrence when they lived in Hampshire and a personal friend since that time so that he was able to speak

to some extent of events that took place when they came to move into Westbrook Manor.

30. In general terms, I am satisfied that all the respondents' witnesses gave me their honest evidence to the best of their recollection. Mrs Lawrence in particular was very careful to ensure both in her witness statement and oral testimony that she did not go beyond what she could positively recall and state from her own knowledge. Michael Lawrence's evidence, in my view, was to some extent affected by the very strong feelings that he has as a result of what he perceives to be the injustice suffered by his father at the hands of Lloyds. It is not of course the purpose of these proceedings to come to any judgment upon that matter; the enforceability of liabilities to Lloyds in general is a matter that has been extensively litigated in other proceedings and, so far as the estate is concerned, is established by a judgment against it. Whilst he too was careful not to give in evidence anything that he knew to be untrue, I did come to the view that in his anxiety to protect the family's interests against what he saw as unjustified claims he had allowed his evidence to be coloured by a certain amount of exaggeration and wishful thinking. In considering my findings of fact, I approach it therefore with some caution.

31. The events material to the creation of the interests alleged by the respondents took place in 1986 and 1987. There are no contemporary documents, with the result that the testimony of the witnesses can only be tested, if at all, by comparison with statements made in subsequent documents, particularly those that came into existence when the claim to these interests was first put forward in correspondence with Lloyds and its advisers in the 1990s. The matters in controversy can be separated into two parts, firstly and most importantly the question of what if any promises, assurances or agreements were made between Michael Lawrence and his parents, and secondly the extent of the financial and other commitments that he made in reliance thereon.

32. I deal first with one particular aspect of the second question, namely the amount that Michael Lawrence claims that he spent on the separation of the property into two units and modification for use by his family and his parents. I do so because it shows a particular reason why, in my view, Michael Lawrence's evidence should not be accepted entirely without reservation. In his first witness statement (bundle page 17, paragraph 14) he puts the total amount spent by him as approximately £40,000, and exhibits a schedule making up that amount. This is in two parts; an unpriced list of works done (page 143) and a list of monetary amounts (page 144) headed "reconstruction of costs involved in making Westbrook Manor satisfactory for two related nuclear families". For the most part, these amounts consisted of withdrawals from an account in Michael Lawrence's name at the Woolwich building society, copies of the relevant passbook appearing at page 293 of the bundle. There was nothing in those documents, or any other evidence, to show what the amounts withdrawn had been used for. Of the total of some £35,500 said to have been withdrawn from that account, Mr Lawrence was obliged to accept in cross-examination that four entries totalling just under £12,500 were in fact credits to the account and not withdrawals from it. The balance, however, he maintained could only be in respect of works done at Westbrook Manor. A smaller amount, £3884, was made up of various withdrawals from credit card accounts and other payments, about 20 in all, of which only four are identified even as to the payee, one is in respect of a telephone bill and the others are unexplained. No receipts or other documentation have been provided, although they have been requested. Asked how he could identify particular payments to the payees mentioned, Mr Lawrence said that he must have had a receipt when compiling his list, although he had not produced it.

33. On 19 July 1993, Mr Johnson's firm on behalf of Michael Lawrence wrote to Lloyds in support of the claim that he and his wife held proprietary interests in Westbrook Manor. In that letter they said "the agreement that was reached involved substantial expenditure on our clients' part, and in fact a sum of £18,000, the vast bulk of which can be clearly vouched, over a year or so from the middle of 1986 when our clients moved to live at the property". In a later letter dated 1 November 1993 Mr Johnson again wrote to Lloyds beginning "we can now enclose documents showing what money was expended on the property by or for our clients. You will see that the total sum, set out on the summary, is £18,404. It is on that expenditure that our clients would assert their rights in the proceeds of sale of the property". It would appear therefore that at that date documents had been produced evidencing, or at least detailing, expenditure of £18,404, although neither side has produced them for the benefit of these proceedings. That documentation was clearly accepted at the time by Lloyds; they replied on 21 December 1993 saying "it is appreciated that your clients' contribution to the renovation of the property amounts to £18,404". Importantly, however Michael Lawrence had clearly not instructed his solicitors that he had spent any amount greater than £18,404 as he now claims.

34. Although Mr Lawrence attempted to explain the difference in cross-examination, he could not do so satisfactorily and I am satisfied that the best evidence of what he actually spent in 1986/7 is the figure that he put forward in 1993 when his memory must have been fresher and documentation was available to him, and not the reconstruction he has subsequently sought to make. I note in passing that in December 1995 (in a letter which was not put to him) he wrote to his own solicitor putting the amount spent at 'about £20,000'.

35. On the crucial issue of what promises or assurances were made, in his witness statement Michael Lawrence described them in these terms:

> "10. … A number of discussions took place between my parents, my wife and myself. This was a very big decision on our part as we were uprooting from Yorkshire and close friendships we had built up over a number of years would be lost. It also meant that we were getting off the property ladder by losing our home but I was coming home. We decided to move …
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> 11. … Once a decision in principle had been made and I sat down with my parents to talk about how this was to be implemented and what it was going to cost in financial terms. My wife and I wanted security and both my parents assured us that if we, as a family, moved down from Yorkshire to the Property my wife and I could live at the Property for the rest of our lives. My father in particular recognised that we were selling our own home and putting our money into Property to convert it for everyone's purposes. I told my father bluntly that we would not be doing this if we did not have at the very least certainty of occupation and although nothing was ever put in writing-it is not something which our family would normally do-my parents on occasions too numerous to mention, confirmed that once we did move this would be our home forever.

> 12. I knew my parents had left the bulk of their estates to one another on death and that my sister and I would inherit when our surviving parent died. I therefore discussed this decision with my sister (who is married and lives in Australia) and in particular the consequences to her once I moved south. She was perfectly happy with the arrangement, pleased that my parents would have full-time care … this was an important factor for my sister and of course for my parents as they knew that they would be looked after by the family for the rest of their days.
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> 13. It is true to say that there was no express discussion about what share of the enhanced property my wife and I would enjoy on the works being completed. … Everybody knew that not only would we be staying at the Property … for the rest of my parents' lives but also after they died, as it would be our home.
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> 16. … Once we did move I do not recollect any further discussions about our right of occupation or any discussion about the interest we had at the Property as it was never thought necessary. ..
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> 17. On the basis of the discussions that I had with my father, throughout, my wife and I assumed and worked on the basis that we would be able to live in the Property for as long as we wanted. … We never thought that the precise ownership and occupation of the Property, by whom and for how long, would become important, especially during my mother's lifetime. ”

36. Mrs Lawrence's evidence did not go so far. In her witness statement she said:

> “4. … Mr [Owen] Lawrence and I were thinking about selling the property because it was becoming a little bit too large for us but we were very reluctant to do so because we were so happy here.
>
> 5. The topic of our move did of course come up whilst Michael was staying with us. … He said he would speak to his wife with a view to seeing whether or not some plan could be put in place which would allow us to remain at our home. He then came up with the proposal that we all live in the Property but divide it in two to allow us to have separate identifiable households. …
>
> 6. I was present at these discussions, although they were principally between Mr Lawrence and Michael. I remember that there was considerable talk about the cost of the work. We agreed to make a contribution to the alterations as we knew that Michael would have used all the equity which he and his wife had in that property in Yorkshire to fund most of the costs. …
>
> 7. I am asked but I do not recall any discussion at the time about any agreement as to the terms upon which Michael and his family would be living at the Property. It was taken for

> granted by me that they would look on this as their home for the rest of their lives. I have subsequently become aware that there were discussions between Michael and Mr Lawrence but I was not a party to those conversations and therefore can add nothing on that particular point. As far as I was concerned given that they were carrying out all these works, they were here to stay for good. "

37. Miss Hilliard drew attention to a number of points arising from this evidence.

    i) There was no evidence from Michael's sister to confirm the alleged discussions with her.

    ii) Neither Michael Lawrence nor Mrs Lawrence referred to any discussion at any time about the acquisition of a beneficial interest in the property in exchange for the money to be spent on the alterations to it. Indeed, Michael Lawrence expressly acknowledges that there was no such discussion.

    iii) Although Michael Lawrence refers to confirmations by "my parents on occasions too numerous to mention" that Westbrook Manor was to be his and his wife's home forever, and to his having told his father that he must have "at the very least certainty of occupation" Mrs Lawrence said she was a party to the relevant discussions but could recall no such conversation, and said only that it was her assumption that Michael Lawrence and his wife would regard it as their home for the rest of their lives. She was asked about this in cross-examination and said "you never know what will happen. It was just assumed things would go on as they were." Asked if it were possible that Michael and his wife might move out she said "I suppose so. We were thinking more about what would happen if we die." Asked whether if Michael wished to move she would have sought to stop him she said "I don't imagine so, no. It hadn't occurred to me". These questions went to the question whether there was anything to prevent Michael from changing his mind and moving out if he wished to do so, and showed that Mrs Lawrence did not regard him as obliged to stay. Mrs Lawrence was not asked whether she considered there to be anything in the arrangements made which would have prevented her and Owen Lawrence from terminating them and requiring Michael and his wife to move out, if they chose to do so.

38. The latter point is of course the critical issue. The question for the court is essentially whether the arrangements made between the parties at that time amounted only to a revocable licence or permission by Owen Lawrence and his wife as the owners of Westbrook Manor for their son and his family to live in the property, or whether it conferred on Michael Lawrence and his wife an enforceable right to remain for life or some other period, even if his parents changed their mind and wished them to leave. Michael Lawrence's evidence was that he had demanded security and been given this express promise by both his parents. His mother, however, did not confirm this.

39. A number of documents were put to Michael Lawrence on the basis that they indicated that his father had not regarded the arrangements made between them as giving rise to any enforceable interest in the property, and certainly had not recognised any reduction in the value of its own interest arising from those arrangements. As to a reduction in value, Michael Lawrence said in cross-

examination "I didn't realise it at the time, nor would he. Only when it became an issue did we look at it." The documents were as follows.

40. A "Declaration of Personal Financial Position" made to Lloyds by Owen Lawrence and Mrs Lawrence dated 22 July 1991. The purpose of this document was to set out their assets, income and liabilities for the purposes of an application for financial assistance from Lloyds. It would therefore be obviously in the interests of Owen Lawrence in making that application to draw attention to any factor diminishing the amount of their assets and income, and to ensure that all liabilities and outgoings were fully stated. In that application, the value of Westbrook Manor is stated as being £260,809, divided equally between Owen Lawrence and Mrs Lawrence, who are stated to hold as tenants in common. There is no reference to any diminution in the value of their interests by virtue of the occupation by Michael Lawrence and his family, or any rights held by them. Mr Lawrence's annual expenditure is stated to be £17,718, less a contribution from his son of £2500, showing an excess of expenditure over income of approximately £1300 per annum. I note in passing that this statement of Michael Lawrence's contribution is substantially lower than that which Michael Lawrence put forward in these proceedings; in his witness statement (p17 at para 16) he maintained that he and his wife were paying more than half of the total outgoings at the property.

41. In a schedule dealing with the house and its valuation, Owen Lawrence referred to Michael and his family having moved in to Westbrook Manor because "the cost of property in Berkshire was very different from Yorkshire", implying that the funds available from the sale of the house in Yorkshire would not have been sufficient to purchase suitable accommodation in Berkshire. There is no valuation evidence on the point, but this contradicts the evidence given by Michael Lawrence, which was to the effect that his property in Yorkshire was from a relatively expensive area, and that he could, if he had chosen to, have sold it and purchased an equivalent property for the same money in Berkshire.

42. As to the arrangements made with Michael, Owen Lawrence said "my son and his family have occupied half the house since July 1986, but it has always been on the basis that it might not last, so no formal agreements have been entered into, and therefore no clearly defined subdivision of costs and expenses although it has been mutually agreed that my son must bear a due proportion of the housing costs." He makes reference to Michael having been made redundant in 1990 and now being involved in the exploitation of an invention, noting that "clearly there are financial risks involved". The apparent intention of this section of the document is to emphasise the small and precarious nature of the contribution made by Michael to household expenses. It would certainly have been consistent with that theme for Owen Lawrence to emphasise any reduction in the value of his principal asset, or any difficulty in the way of realising it, arising from rights granted to Michael Lawrence, if he (Owen Lawrence) considered that he had done so.

43. The declaration included a section requiring disclosure of details of any disposal of assets within the previous five years (page 88). In this section, Owen Lawrence wrote "there has been no disposal of wealth". Asked about this, Michael Lawrence said that he had not known about this document. At first he said that the arrangements with him and his wife had been made more than five years before the declaration, but he had to accept that was not so. He was clearly uncomfortable with the implication that his father had not regarded those arrangements as disposing of any part of the value of

his property, and said that he was "very unhappy with this document" and that his father had made it without the benefit of legal advice.

44. Secondly, Owen Lawrence prepared a typed document dated 18 October 1993 (p145), which was evidently for use in connection with the correspondence with Lloyds at the time. It is headed "the residence of Mr JM W Lawrence and family at Westbrook Manor" and contains the following:

> " In the spring of 1986 a verbal contract was entered into by Mr J M W Lawrence with his father Mr J O N Lawrence about he and his family taking up residence at Westbrook Manor. Essentially there had to be some alterations to the buildings for this to be conveniently possible, which would have to be paid by Mr J M W Lawrence, and there would be ongoing expenses. [He goes on to give further details of the alterations made and the arrangements in relation to sharing of expenses]"

45. It was put to Michael Lawrence that at the time this document was prepared, solicitors on his behalf were writing letters asserting that he had both an equitable interest in the beneficial ownership of the property, and a right to occupy for life. No such interests were mentioned in this document, although it would have been an ideal opportunity to do so. Michael Lawrence said that his father had agreed to make the statement because "he realised I needed some bit of paper saying what the situation was. But he restricted it to his analysis of the money spent on splitting the property". He accepted that his father could have taken the opportunity in it to set out the interests he now claimed, but have not done so. That did not mean, he said, that no such arrangement as he contended for had been made.

46. When the executors made the disputed transfer to Michael Lawrence, he and his mother entered into a simultaneous declaration of trust dated 3 April 1996 (page 101). This document provides that neither may sell the property without the consent of the other, but that on the death of Mrs Lawrence, the property is to be sold and the proceeds paid as to 42.5% to Mrs Lawrence (or her estate) and 57.5% to Michael Lawrence, unless Michael Lawrence exercises an option to acquire Mrs Lawrence's interest in the property provided by clause 4(c) of the document. That clause in turn specifies that the price payable to Mrs Lawrence's estate would be 42.5% of the value of the whole property if sold with vacant possession.

47. The effect of these provisions, it was accepted, was that one way or another an amount equal to 42.5 % of the value of the property with vacant possession would fall into Mrs Lawrence's estate. There would be no reduction on account of the right to occupy for life which is now claimed on behalf of Michael Lawrence and his wife, although it would no doubt be expected to be the case that one or both of them would still be alive so that the right would be subsisting at the death of Mrs Lawrence senior. Miss Hilliard put it to Mr Lawrence in cross-examination that this did not confirm the existence of the right that he claimed but only supported an intention that he should be able to occupy the property until the death of his mother, but Michael Lawrence professed not to follow the point. He did accept that part at least of the purpose of these provisions was to enable his sister to benefit from a share in the value of the property on the death of his mother. It was suggested that the document represented an attempt to give his sister her inheritance but deprive Lloyds of the value of their claim, to which he responded that that "was not the intent".

48. It was put to Mr Lawrence that if the property was sold for £1m (consistent with the present day unencumbered valuation agreed by the experts) his sister would inherit £500,000, to which he responded that the amount would be £420,000. This would imply that his mother's will left her interest in the property to his sister rather than dividing it equally between her two children. Asked about her will (which was not in evidence) Mrs Lawrence said at first that she had left her estate equally to Michael and his sister. It consisted of her interest in the house, and some investments she referred to as her "capital". She said she had divided the "capital" equally. Asked if she had left her share in the house and equally between them she at first said "no, I don't think so, my son has bought part hasn't he?" Then asked to whom she had left the 42% provided by the deed of trust she said "I don't know that I have. I think it would come into the half. Half of the capital and half of the 42%. I'm not terribly clear". Since Michael Lawrence was clear that his sister would inherit £420,000, and is in my view likely to be aware of the content of his mother's will, I infer that it is more likely that the will leaves the entire proceeds of sale of the property to her daughter, whilst it divides other assets equally between the two children. If so this suggests that the will may be seeking to even up, to some extent, an advantage that Michael Lawrence may be thought to have gained by acquiring his father's interest in the property for only £38,000.

49. That inference would also be supported by a letter dated 6 December 1995 that Michael Lawrence wrote to Mr Streather, the solicitor acting for the executors at that time (page 196). In that letter he said "it is our intention that equitable sharing should be maintained within the family by the alteration of my mother's will to compensate for the benefits that I will have obtained through the house purchase".

50. Inserting the sale and option provisions in the deed of trust represented a substantial concession on his behalf to his sister, if Michael Lawrence's case is correct, because it involves, impliedly at least, giving up the right of occupation for life that he now claims was already vested in him. In such circumstances, one might expect that the document drawn up to achieve this effect would expressly refer to that right and expressly surrender or curtail it, but it does not do so. Furthermore, it is notable that although Michael Lawrence's case is that his wife enjoys the same right of occupation, she is not a party to the declaration of trust and there appears to be no other mechanism by which her rights, if they exist, would be extinguished at the date of death of Mrs Lawrence senior.

51. Mr Andrew Johnson, who it will be recalled was a solicitor acting for Michael Lawrence, gave evidence and was cross-examined. He had made some comments in his witness statement about his understanding of the arrangements made when Michael Lawrence moved into Westbrook Manor, but he accepted that he was not party to any discussions between Michael Lawrence and his parents and his understanding arose only from social conversations with Michael Lawrence.

52. It was Mr Johnson who was instructed by Michael Lawrence to write the letters to Lloyds that I have referred to already. In addition, he wrote a letter dated 29 March 1993 to Lee & Pembertons, a firm who at the time were instructed to represent the separate interests of Owen Lawrence (p154). In that letter, Mr Johnson put forward the claim that Michael Lawrence was advancing against the interest of his father and mother. It is plain that the arrangements for separate representation were made, and the advice given, in a spirit of cooperation between the family members and their respective solicitors. The letter begins by thanking Lee & Pembertons for providing copies of the correspondence with Lloyds. It goes on to say:

> "As your client will have told you, our clients invested some £18,000 in 1986 or thereabouts in conversion work in respect of Westbrook Manor …
>
> We think it is beyond any serious doubt that in doing so they acquired rights in Westbrook Manor not only of occupation but also of equitable ownership. As to the rights of occupation we think they certainly run for the foreseeable future, and probably will extend beyond the death or departure of the survivor of Mr and Mrs Lawrence senior. As far as equitable ownership rights are concerned then we think that at the very least they would extend to the value of what our clients would otherwise now have from appropriate investment of the money which was in fact put into the house. "

53. Mr Johnson accepted that this letter reflected the instructions he had been given, and that it said nothing about any agreement between Michael Lawrence and his father, either that he should have an equitable beneficial interest in the property, or that he should have a right of occupation. Rather, it was written on the basis that because of the expenditure, Michael Lawrence and his wife had acquired an interest. That, Mr Johnson said, was the point of the letter. Furthermore, his later letter of 19 July 1993 to Lloyds also said nothing about any agreement for the creation of a beneficial interest in the property. Mr Johnson accepted that as well, and said that the letter was "specifically written at the request of the solicitors acting for Owen Lawrence… we needed to be seen to be making these points." The later letter did go on to say that "it was part of the agreement that our clients would have a continuing right to live in the property and that it would not be disposed of over their heads". In relation to this Mr Johnson said that "the two issues (beneficial interest and right to occupation) always seemed distinct. Expenditure on another's property was dealt with under ordinary rules of presumption and trusts. Rights of occupation are interests arising by agreement."

54. It was also put to Mr Johnson that although he had referred in his letter to Lloyds to rights of occupation being "part of the agreement" his instructions were reflected in what was written in the original letter to Lee & Pembertons, and the way it was expressed in a letter to Lloyds was speculation. In relation to that he said "in the context of what is written, that is right. I couldn't point to a document. The purpose of this letter was to complete a picture being put to Lloyds by Owen Lawrence. We were not saying "this is the agreement" it was to draw attention in support of what they were putting forward as far as [the Hardship Committee] was concerned. I wasn't engaged to define the agreement, it was a family agreement. "

55. In June 1995, Mr Johnson's firm (though not Mr Johnson personally) obtained an opinion of counsel in relation to the strength of the claim being advanced to Lloyds that Michael Lawrence held an existing beneficial interest in the property and that right to occupy for life. That opinion was given by Mr Gabriel Fadipe, and is at page 191 of the bundle. The documents provided to counsel for the purposes of that opinion are not disclosed, but it is possible to infer something about them and the instructions given from the opinion itself.

56. Beginning at paragraph 4 of this opinion, Mr Fadipe says

> "4. It is likely in my view that the clients enjoy a right of occupation by way of proprietary licence, see for example *Pascoe v Turner* [1971] 1 WLR 431. Effectively, there was an agreement, whether express or implied, between them and Mr Lawrence's parents that the clients would be allowed to reside in the property; on the basis of that agreement the clients spent money in converting the property and contributed to the outgoings, such that it would now be inequitable to deny them the right to occupy the property.
>
> 5. The difficulty with this analysis is that it leaves open to question the intended duration of the licence to occupy the property. The fact that Mr Lawrence's parents were free to leave the property to whoever they wished by will (see Mr Lawrence's undated letter) suggests that the right of occupation was indeed limited to their lives…
>
> 7. Clearly, if the parties had actually discussed the duration of the licence (although not in such terms), or it had been assumed by all that the clients would be allowed to live in the property for as long as they wished, the clients would have a considerably stronger case. Nonetheless in as much as Lloyd's have no evidence to the contrary I think the contention that the right to occupy was intended to be permanent can properly be put forward in the course of negotiations."

57. I should say that Mr French does not rely on *Pascoe v Turner*, or the concept of a "proprietary licence"; in that case the claim was for a constructive trust of the whole beneficial interest in a property bought by a man for occupation by his mistress, based on his repeated promises to her that "the house is yours and everything in it". That claim failed, but the Court of Appeal held that the circumstances gave rise to a proprietary estoppel, and the minimum equity required to give effect to that estoppel was a licence to occupy the property.

58. What does appear from the opinion is firstly that Mr Fadipe was provided with an undated letter written by Michael Lawrence stating that the intention of all concerned was that Owen Lawrence and Mrs Lawrence were free to leave the property by will to whomever they wished. Clearly that would be inconsistent with his present claim that he was entitled to (and indeed had expressly agreed with his parents) a right to occupy the property in favour of himself and his wife for their own lives. Further, it seems plain that Mr Fadipe was not told of any actual discussion of the duration of a licence, although it would have been relevant to his instructions if there had been any such discussion. His advice was that it would support the claim being put forward if there had been any such discussions; one is bound to treat with some scepticism the fact that evidence is now given that makes good the weakness in the case identified by counsel at the time.

59. Cross-examined about the content of the opinion, Mr Johnson emphasised that the concern at the time was that there was no written agreement. He accepted that the wording of the opinion meant that counsel could not have been instructed that there was any defined agreement, although he maintained that the fact that there was no written document did not mean that was no agreement at all. He accepted that counsel could not have been told that there had been discussions as to the duration of

the licence, although he did not think it follows that counsel had been instructed that no agreement had been reached. In re-examination, Mr Johnson said that his correspondence with Lloyds was "taking a negotiating position really, to support the position being put forward by Lee & Pembertons and to assist Owen Lawrence." It was put to him that the implication of the questions he had been asked was that he was "beefing up" the case, to which he said "I am sensitive about allegations of beefing up. We were conscious that nothing should be said that we didn't believe was true. I wouldn't suggest that someone run an argument simply because it couldn't be gainsaid. You have to start believing that it is true."

Conclusions of fact

60. Having considered this evidence, my conclusions of fact are as follows:

i) When Michael Lawrence discussed with his parents in 1986 and 1987 the proposal that he and his family should move to Westbrook Manor, they discussed matters such as the physical alterations that would be needed to the property for occupation, and who would pay for the costs of that alteration and other works such as the installation of the lift for the benefit of Mr and Mrs Lawrence senior. They also discussed the contribution that Michael Lawrence and his family would make to outgoings in the future.

ii) They did not however discuss, let alone agree, the acquisition of any beneficial interest in the property by Michael Lawrence or his wife.

iii) Although it was agreed that Michael Lawrence and his family would move in, there was no discussion or agreement of the status that they would have as occupants of the property. In particular there was no discussion or agreement to the effect that they would acquire any right to reside in the property enforceable as against Mr and Mrs Lawrence senior should they change their minds. Nor was there any discussion or agreement of a specific date at which the arrangement would come to an end (or a date such as the death of any of the parties concerned) or of any mechanism by which it might be brought to an end. There was, no doubt, an expectation on all sides that the arrangement would continue for the foreseeable future. However this is not the same as saying that it constituted an arrangement that was binding indefinitely. I do not accept Michael Lawrence's evidence that either his father or his mother specifically agreed that he and his wife would have the right to occupy the property for life. That evidence was not supported by his mother or by any of the documents created by Owen Lawrence, and went beyond what Michael Lawrence himself originally put forward through his solicitors, both in correspondence and to his own counsel.

iv) Owen Lawrence did not consider that the arrangements made gave rise to any interest in the property binding on him, or which affected the value of his own interest. Had he done so, he would be more than likely to have said so explicitly in the various documents referred to above that he himself created for the purpose of persuading Lloyds that his assets and income were insufficient to support his liabilities to Lloyds. The fact that he did not do so, even at a time when those rights were being asserted to Lloyds by Michael Lawrence, is in my view highly telling. I was referred to no document created by Owen Lawrence acknowledging any beneficial interest in the property. The nearest he ever got to referring to an obligation in respect of occupation would

seem to be the letter that he wrote on 8 October 1993 which spoke of "a verbal contract" but the use of this terminology does not in my view indicate an acknowledgement of a legal obligation; Owen Lawrence described the same arrangements earlier in his 1991 declaration as having "always been on the basis that it might not last so no formal agreements have been entered into". I recognise of course that Owen Lawrence's subjective view of the position is not conclusive; it is not uncommon to find the parties do not recognise the legal consequences of arrangements that they have made. Had Owen Lawrence for instance expressly agreed that his son would have a right of occupation for life, it would make no difference that he may have failed to recognise that this would diminish the value of his own interest in the property. But where, as here, the court is required to consider whether an inference must be drawn from conduct that both parties must have intended by that conduct to create a binding right rather than a revocable permission, it must be relevant that the party alleged to have intended to be bound by that right did not consider himself to be so.

v) It is more likely than not that, to the extent that there was any expectation about the extent of these arrangements for occupation, it was that whatever they were, they would come to an end in any event on the death of the survivor of Mr and Mrs Lawrence senior. This it seems to me must have been what underlay the letter that Michael Lawrence wrote, referred to by Mr Fadipe of counsel acknowledging that they would be free on their deaths to leave the property to whomever they wished. It would enable Michael Lawrence's sister to receive an inheritance from their parents' estate comparable to the amount of the assets which had passed to him. That objective was expressly recognised by Michael Lawrence himself in the letter to his solicitors of 6 December 1995. It also seems to me a much more likely interpretation that the declaration of trust entered into by Michael Lawrence and his mother was a continuation of this expectation and policy of equalisation of distribution, rather than the surrender for the benefit of his sister of rights already held by him.

Conclusions

61. In the light of those findings, I turn to consider the issues before me. Taking first the question of whether Michael Lawrence has a beneficial interest in the property, in my judgment he has not. Having found that there was no agreement or discussion for the creation of any interest, there is no foundation for the existence of any constructive trust based on express agreement, or any proprietary estoppel based on a sufficiently clear promise that such an interest would be created. There remains the possibility that an intention to create such an interest might be inferred from acts of conduct although, as noted by Sir John Chadwick in *James v Thomas*, this is an inference the court will be slow to make. In so far as the conduct relied on consists of payments in respect of alterations to the property at the time Michael Lawrence and his family moved in, and the act of moving in to the property rather than buying one of their own, it seems to me that this does not lead to an inference that the parties must have intended that he should acquire an interest in the property. The payments were substantially, if not exclusively, for the benefit of Michael Lawrence and his family in that they secured the division of property into separate living accommodation for them to enjoy, and would be equally consistent, in the context of arrangements made within a family, with those arrangements being of a loose, undefined and non-binding nature. The continuing contribution to outgoings is equally explicable as being simply

the ordinary cost of living. The arrangements made did of course result in Michael Lawrence and his wife giving up a separate property that they had previously owned, but I have no doubt that there would have been substantial advantages to them of living in a large and pleasant property such as Westbrook Manor, and as well as having the motive of looking after and assisting his parents in that property, Michael Lawrence no doubt expected that in due course he would benefit from a substantial inheritance deriving from his parents' ownership of the property (which they would otherwise have sold) even if it had to be shared with his sister. These are advantages which people in their position might well have felt to outweigh the benefits of having their own property, and so no foundation for inferring that they would only have taken that course if they obtained an interest in Westbrook Manor.

62. Having found that the claim to a beneficial interest fails at the first hurdle, there is no need for me to consider the extent of that interest. In relation to the 15% interest that has been claimed, I say only that the assertion of such an interest appears to have been born of the fallacy that expenditure in relation to a property of itself creates an interest in the property, and the 15% figure seems to have been more of a negotiating figure derived from the most optimistic interpretation that Michael Lawrence and his advisers were able to arrive at when discussions were taking place with Lloyds. On earlier occasions, it had been asserted that the interest amounted to only 7.35%, or the percentage by which the value of the property had been increased by virtue of the work done (though it is accepted now that the work has reduced, rather than increased, the value of the property because any likely purchaser would want to reverse the work and recreate a single dwelling), or the value that the amount spent might have grown to if alternatively invested, so the contention has moved around with time.

63. I approach the question whether a binding right of occupation has been created in the same two-stage process. Having found that there was no express discussion or agreement to create such a binding right, the question is whether such an intention should be inferred from conduct. It would be a proprietary right, so the dictum of Sir John Chadwick that the court should be slow to make such an inference merely from conduct is to be applied.

64. This question has caused me anxious consideration. I can quite see that Michael Lawrence would not have committed himself to expenditure on the property if he expected that his family would only be occupying it for a short time. Furthermore, if the arrangement was one which amounted only to a licence that was indefinite in duration but terminable at the option of Owen Lawrence (or Mrs Lawrence), there might clearly be a sense of grievance on Michael Lawrence's part if his parents had changed their minds for no good reason and terminated it, particularly if they did so after only a short time, without at least repaying some or all of the money that had been spent. But in the end I come to the conclusion that no such inference should be drawn. This is for a number of reasons:

i) Family arrangements may be infinitely varied. The inferences that are to be drawn from them are highly dependent on the particular facts and cannot be generalised. An inference that may be appropriate in the case of an unmarried couple moving in to live together may be inappropriate in the case of a child moving in to live with his parents, or vice versa.

ii) No doubt neither Michael Lawrence nor his father went into the arrangement expecting that they would be terminating it in the short term. But that is not

the same as saying that they must be taken to have agreed that they could not do so if they considered that the circumstances warranted it. I do not think it would be likely, for instance, that Owen Lawrence would have expected that by allowing his son to occupy part of his property, paying a capital amount which even at the time must have represented a relatively small part of the value of the property, he effectively put it beyond his power to sell the property if he should have chosen to do so. And yet that is precisely the right that was asserted against him.

iii) Indeed, I have indicated above my finding that Owen Lawrence did not consider that he had created a binding right of occupation, or any right which reduced the value of his interest in the property. That in my judgment is a strong pointer to the conclusion that an intention to create any such right, which would have to be a common intention of both parties, should not be inferred.

iv) Although it may well be said that it would be unwise for someone in Michael Lawrence's position to commit expenditure to a property in which he had no interest and no security in law of occupation, it cannot be said that relying on his parents to continue the arrangement was so precarious that no reasonable person would have done so. Accordingly, it cannot be inferred that such an arrangement must necessarily be on the basis that a legally enforceable right was created. The court is not in the position of creating a right in law or equity to make good the unwisdom of the parties' own arrangements, but of interpreting the intentions of the parties themselves.

v) No doubt, there was a risk that the arrangements would not have worked out, and that either Michael Lawrence might have chosen to leave the property, or Owen Lawrence might have required him to do so. That would seem to have been a risk that might have had adverse consequences for either party; Mr and Mrs Lawrence senior might not have received the continuing care that they expected. But I cannot think that it could be said that Michael Lawrence and his wife were obliged, either contractually or as a condition of their occupation of the property, to continue to provide that care in circumstances where the family relationship had broken down. Although Michael Lawrence said he regarded himself as bound to stay and continue to provide care, in my view this can be seen only as a moral obligation and not a legal one. If Michael Lawrence and his wife had decided to leave, as is now apparent, the works that they had performed have diminished the value of the property and Owen Lawrence and his wife might be in the position of having to sell it and suffer a loss. It could not be said that Michael Lawrence was obliged to make this good. These are the sorts of risks that family members may very well be prepared to accept when making arrangements between themselves, precisely because they trust the other parties to those arrangements. The existence of those risks, and the trust (in a non-legal sense) that family members repose in each other are not, in my view, good reasons to convert informal family arrangements into formal legally binding ones.

65. I conclude therefore that no common intention to create a binding right to occupy can be inferred from the conduct of the parties in making arrangements that they did. It is not, therefore, strictly necessary for me to consider the submissions as to the extent of any right to occupy which may have been created, and in particular whether it would have lasted for the life of Michael Lawrence and his wife. However, in case the

matter goes further, I should say that in the absence of specific agreement to create a right lasting for the life of the occupiers, it would in my view take a strong set of facts for the court to conclude that such an extensive right must have been intended. It is far from the only possible inference- another possibility for instance would be that there would be an implied right to terminate but only on reasonable notice, the reasonableness of the length of notice depending on the circumstances, including in this case the capital money spent on modifications to the property. On the facts of this case, if I had found that any right to occupy had been intended, I would have concluded for the reasons that I have given above, that there was a common assumption that it would come to the end at the latest on the death of the survivor of Mr and Mrs Lawrence senior.

66. It follows from my primary findings that Owen Lawrence's interest in the property at the date of his death was 50% and not 42.5%, and that that interest was not reduced in value by virtue of any enforceable right of occupation on the part of Michael Lawrence or his wife. The disposal of that interest for £38,250 was therefore at a gross undervalue, and prejudicial to the interests of the creditors of the estate. It is prima facie void by virtue of section 284 of the Insolvency Act1986, and there are no proper grounds upon which the court should ratify it.

67. I should also say that, even if I had concluded that there was a right to occupy expiring on the death of Mrs Lawrence senior, I would have declined to ratify the transfer. There is no evidence as to the effect of such a right on the value of the property, and given that the onus must be on those who seek a ratification order to persuade the court that it is appropriate to make one, such an order should be refused in the absence of such evidence. In this case it seems clear that given that Mrs Lawrence's life expectancy in 1996 must have been much less than that of Michael Lawrence and his wife, the discount to be applied would inevitably have been much less than that which was applied by experts to reflect the interest that Michael Lawrence contended for, with the result that it is overwhelmingly likely that the price paid would have represented a substantial undervalue.

68. Finally, I should mention that Mr French raised various matters which might be generally described as going to delay and conduct on the part of Lloyds which, he said, should result in the relief claimed being barred. I reject that argument entirely- insofar as there has been delay in pursuing the question of the legitimacy of the transfer of the property it has been caused primarily by the dogged but ultimately unsuccessful resistance of the family to the assertion of Lloyds' claim. There has been no point at which Lloyds can properly be said to have led the executors to believe that the transfer was accepted as valid, still less any reliance on such a representation. At the most, there came a point in negotiations when the solicitors acting for Lloyds indicated that they would recommend a settlement- but Lloyds, as it was entitled to do, did not accept that recommendation, no settlement agreement was made and Lloyds was fully entitled thereafter to pursue its remedy against the estate, as it did. If there had been any issue as to the effect of the negotiations, it should have been raised in the action by Lloyds against the estate, and not in these proceedings which are brought by the Trustee. None of the matters complained of are in my judgment any bar to the relief sought.

69. There may be matters arising, in particular as to the form of order and whether it would be appropriate to order that the money paid by Michael Lawrence should be repaid to him, and if so with or without interest. If the parties are unable to agree these matters, as indicated at the conclusion of the trial I will fix a hearing upon

receipt of an agreed time estimate. In the meantime, I will fix a short hearing at which this judgment will be formally handed down, at which there need be no attendance. I remind the parties however that if there is any intention to apply to me for permission to appeal, time runs from the date of handing down of the judgment, unless the hearing is specifically adjourned for the purpose of considering such a request. Any application for such an adjournment may be made by letter, to be received before the date fixed for handing down.