Neutral Citation Number: [2020] EWHC 3091 (Ch)

Case No: CH-2020-000022

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

7 Rolls Building
Fetter Lane
London EC4A 1NL

Date: 17 November 2020

Before :

MR JUSTICE ZACAROLI

- -

Between :

OBINNA VITALIS ANAGHARA (as personal representative to the estate of Ferdinand Anyaoha Anaghara deceased)	**Appellant**
- and –	
(1) ALICE ANAGHARA (2) IKECHUKWU ANAGHARA (3) CHINWE ANAGHARA	**Respondents**

Andrew Williams (instructed by **Hillier McKeown LLP**) for the **Appellant**
Mark Dubbery (instructed by **Alexander Shaw Solicitors**) for the **First Respondent**
The Second and Third Respondents were not present or represented

Hearing dates: 4 November 2020

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APPROVED JUDGMENT

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10.00 a.m. on Tuesday 17th November 2020.

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MR JUSTICE ZACAROLI

Mr Justice Zacaroli:

Introduction

1. This is an appeal against the decision dated 26 September 2019 of HHJ Hellmann sitting in the County Court at Central London following a trial of the claimant's claim for possession of a property in Golders Green, London (the "Property") and for mesne profits.

2. The claimant is the personal representative of the estate of the late Ferdinand Anyaoha Anaghara, referred to as "the Chief" reflecting his title in Nigeria.

3. The first defendant ("Alice") was one of three wives of the Chief. Mr Williams, who appeared on behalf of the claimant, informed me that one of the Chief's wives, Grace, was referred to as his "statutory wife" in Nigeria, while Alice and the other wife, Benedith, were "customary" wives.

4. The claimant is the son of the Chief and Benedith. The second defendant ("Ike") is the son of the Chief and Alice. The third defendant ("Chinwe") is Ike's wife.

5. The Property was purchased by the Chief in 1976 and has at all material times been registered in his name. Alice has lived in the Property continuously since 1984, formerly with three children, Ike, who turned 18 in 1997 and moved out in 2004, Chioma, who turned 18 in 1991 or 1992 and moved out in 1991, and Uju, who turned 18 in 1989 or 1990 and moved out in 1991.

6. The Chief would visit the Property only intermittently. By 2000 he visited only two or three times a year. He died in 2007. Ike and Chinwe moved back into the Property in 2016 with their three children. They have subsequently had a fourth child.

7. The claimant received a Grant of Letters of Administration on 7 November 2017. The only asset in the estate is the Property (although further property that the Chief owned – including shares in the Ferdinand group of companies – falls within his Nigerian estate).

8. The claimant served notices to quit dated 5 February 2018 and 17 May 2018 on each of the defendants.

9. By her defence and counterclaim, Alice claimed that the Property was held on constructive trust for her, alternatively that she had an equity in the Property pursuant to the doctrine of proprietary estoppel, entitling her to occupy the Property for life.

10. The Judge dismissed the claim based on constructive trust, and there is no appeal against that decision. He concluded, however, that an equity arose in favour of Alice pursuant to the doctrine of proprietary estoppel, and that the equity was to be satisfied by the grant of a life interest in the Property in favour of Alice. The claimant appeals against that conclusion.

The Judge's findings

11. The judge made a number of findings of fact, most of which are not challenged on this appeal, as follows.

12. The Property was purchased in 1976 as an investment and for use by the Chief and various members of his family when they were in London. Alice had lived there briefly in 1982 and continuously since 1984 but one or more members of the family had also lived there from time to time, at least prior to the Chief's death.

13. The Chief made numerous representations to Alice, the gist of which was that the Property was "her house". In particular, when Alice returned from Nigeria in 1984 and on numerous occasions thereafter, including shortly before his death, he told her that "this was her house, she had to pay for its upkeep". These representations were insufficiently precise, clear and unambiguous to amount to a common intention that Alice would have a beneficial interest in the Property (on which basis the claim for a constructive trust failed).

14. So far as is directly relevant to the claim in proprietary estoppel, the Judge found as follows, at [49] to [55] of his judgment:

    (1) Alice understood, from the representations made to her, that the Property was hers to occupy: "This is what I am satisfied her husband meant and it was reasonable for her to understand him to mean it that way. This is especially as the comments were made in a long stable marriage. It was hers to occupy for as long as she wished."

    (2) Alice relied on these representations to her detriment in two respects:

        a) If the representations had not been made, she would have purchased a property in her name; and

        b) She paid the cost of a replacement boiler (approximately £5,000) in 2016, which she would not have done if she had known there would be a dispute.

    (3) The Judge rejected the contention that Alice relied to her detriment by paying a further £50,000 towards renovating the Property, because he found that this was funded by third parties (Ike and Chinwe).

    (4) The fact that Alice lived in the Property "rent-free" raising the children did not constitute a countervailing benefit and there was no other countervailing benefit.

    (5) Accordingly, an equity arose in Alice's favour because it would be unconscionable for the claimant to resile from the representations made by the Chief.

    (6) The equity was best satisfied by granting Alice a life interest in the Property.

15. Each of these findings, except those in sub-paragraphs (1) and (2)(b), is challenged by one or other party on this appeal.

16. The claimant contends as follows:

    (1) The Judge's finding that Alice acted to her detriment by not having purchased a property in her name was wrong in law as there was insufficient evidential basis for it;

    (2) The sole remaining detriment (payment for the boiler) was *de minimis* and incapable by itself of constituting detriment for the purpose of giving rise to an equity;

    (3) The Judge was wrong to find that there was no countervailing benefit other than living in the Property "rent-free raising the children", because Alice had lived rent-free in the Property since 1997 without any child under 18, and had lived there rent-free since 2004 without any children at all (until Ike and Chinwe moved back in in 2016 with their own family);

    (4) In any event, the Judge erred in exercising his discretion by disregarding altogether the countervailing benefit of rent-free accommodation; he should have weighed this in the balance against the detriment as found by him;

    (5) The Judge erred in his exercise of discretion in awarding Alice a life interest because that was wholly disproportionate to any detriment suffered.

17. By a respondent's notice, Alice challenges the Judge's conclusion that she suffered no detriment in respect of the payment by Ike and Chinwe of £50,000 towards the renovations to the Property.

The Law

18. The principles applicable to a claim based on proprietary estoppel were succinctly stated by Lewison LJ in *Davies v Davies* [2016] P & CR 10. At [38], having noted that any case based on proprietary estoppel is inevitably fact sensitive, he set out the following legal propositions:

> "i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: *Thorner v Major* [2009] UKHL 18; [2009] 1 W.L.R. 776 at [57] and [101].
>
> ii) The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on

that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: *Thorner v Major* at [29].

iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a "mutual understanding" may depend on how the other elements are formulated and understood: *Gillett v Holt* [2001] Ch. 210 at 225; *Henry v Henry* [2010] UKPC 3; [2010] 1 All E.R. 988 at [37].

iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: *Gillett v Holt* at 232; *Henry v Henry* at [38].

v) There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: *Gillett v Holt* at 232.

vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: *Jennings v Rice* [2002] EWCA Civ 159; [2003] 1 P. & C.R. 8 at [56].

vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance: *Henry v Henry* at [51] and [53].

viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: *Jennings v Rice* at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: *Jennings v Rice* at [50] and [51].

> ix) In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: *Jennings v Rice* at [51]. However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a "portable palm tree": *Taylor v Dickens* [1998] 1 F.L.R. 806 (a decision criticised for other reasons in *Gillett v Holt*)."

19. The question of the appropriate remedy was considered by the Court of Appeal In *Jennings v Rice* [2002] EWCA 159. In that case, J had worked for R (a childless widow who had died intestate) on a part-time basis since 1970. By the late 1980s R had stopped paying him, telling him that he need not worry as "he would be alright" and that "this will all be yours one day" (referring to her house). After R's death, J remained living in her property. The judge found that J had believed he was going to receive all or part of R's property on her death, that he acted to his detriment in giving up his spare time to look after her and that it was unconscionable for R to go back on her assurances. The judge awarded J £200,000 under the doctrine of proprietary estoppel, which was the estimated cost of full-time nursing care. J appealed, claiming that he was entitled to the whole of R's estate, or the value of her house and furniture, on the basis that that was his expectation.

20. The Court of Appeal dismissed the appeal. Robert Walker LJ, at [45] to [47] contrasted (i) cases where the assurances, and the claimant's reliance on them, had a consensual character falling not far short of an enforceable contract with (ii) cases where the claimant's expectations were uncertain, or where the high level of the claimant's expectations may have justified only a lower level of expectation. At [47] he said:

> "If the claimant's expectations are uncertain (as will be the case with many honest claimants) then their specific vindication cannot be the appropriate test. A similar problem arises if the court, although satisfied that the claimant has a genuine claim, is not satisfied that the high level of the claimant's expectations is fairly derived from his deceased patron's assurances, which may have justified only a lower level of expectation. In such cases the court may still take the claimant's expectations (or the upper end of any range of expectations) as a starting point, but unless constrained by authority I would regard it as no more than a starting point.

21. He went on, at [48], to find that this approach was supported by a substantial body of English authority. Commenting on the well-known reference of Scarman LJ in *Crabb v Arun District Council* [1976] Ch 179, 198, to "the minimum equity to do justice to the plaintiff", he said that this did not stand alone but was to be read in the context of other authority, in particular the conclusion of the Sir Arthur Hobhouse in the Privy Council in *Plimmer v Wellington Corporation* (1884) 9 App Cas 600, at pp.713-714: "In fact the court must look at the circumstances in each case to decide in what way the equity can be satisfied." Robert Walker LJ concluded:

> "Scarman L.J.'s reference to the minimum does not require the court to be constitutionally parsimonious, but it does implicitly recognise that the court must also do justice to the defendant."

22. At [50], Robert Walker LJ summed up the distinction as follows:

> "…there is a category of case in which the benefactor and the claimant have reached a mutual understanding which is in reasonably clear terms but does not amount to a contract. I have already referred to the typical case of a carer who has the expectation of coming into the benefactor's house, either outright or for life. In such a case the court's natural response is to fulfil the claimant's expectations. But if the claimant's expectations are uncertain, or extravagant, or out of all proportion to the detriment which the claimant has suffered, the court can and should recognise that the claimant's equity should be satisfied in another (and generally more limited) way."

23. That does not mean that the court should, in the latter type of case, abandon expectations completely and look solely to the detriment suffered in order to define the appropriate measure or relief. In some cases detriment may be easy to quantify (such as expenditure on improvements to another person's house, where an equitable charge may be sufficient to satisfy the equity) but in other cases (such as the burden of caring for an elderly person) detriment may be difficult to quantify.

24. In *Davies v Davies*, Lewison LJ (at [39]) noted the "lively controversy" about the essential aim of the discretion; one line of authority takes the view that the aim is to give effect to the claimant's expectation unless it would be disproportionate to do so, while the other line of authority takes the view that the aim is to ensure that the claimant's reliance interest is protected. He noted that much scholarly opinion favoured the second approach and that, logically, there was much to be said for it: "Since the essence of proprietary estoppel is the combination of expectation and detriment, if either is absent the claim must fail. If, therefore, the detriment can be fairly quantified and a claimant receives full compensation for that detriment, that compensation ought, in principle, to remove the foundation of the claim." It was not necessary, however, to resolve that controversy on that appeal.

25. Picking up on Robert Walker LJ's comment in *Jennings* to the effect that in cases that fell short of a quasi-bargain the expectation of the claimant was a "starting point", Lewison LJ said, at [41]:

> "What is not entirely clear from this passage is what the court is to do with the expectation even if it is only a starting point. Mr Blohm suggested that there might be a sliding scale by which the clearer the expectation, the greater the detriment and the longer the passage of time during which the expectation was reasonably held, the greater would be the weight that should be

> given to the expectation. I agree that this is a useful working hypothesis"

26. The claimant relies in particular on Robert Walker LJ's comment at [51] that in some cases the claimant may not be motivated solely by reliance on the assurances "and may receive some countervailing benefit (such as free bed and board). In such circumstances the court has to exercise a wide judicial discretion".

27. To similar effect, in *Henry v Henry* [2010] UKPC 3, the Privy Council held that it is necessary to weigh against the disadvantages suffered by the claimant the advantages which they enjoyed as a consequence of the reliance. On the facts of that case, the Privy Council held that the fact that the claimant had lived rent-free on the relevant land for decades, and reaped the produce of the land, did not outweigh the detriment which he had suffered, namely giving up the opportunity of a better life elsewhere.

28. To the extent that either party is seeking to appeal a finding of fact, I was referred by Mr Dubbery (who appeared for the defendants) to well-known authorities which stress the heavy burden facing an appellant: see, for example, *Re B (A Child)* [2013] UKSC 33, per Lord Kerr at [108], and the following passage from the judgment of Lord Hoffmann in *Piglowska v Piglowska* [1999] 1 WLR 1360, at 1372:

> "If I may quote what I said in *Biogen Inc. v. Medeva Plc*. [1997] R.P.C. 1, 45:
>
> > "The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance … of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."
>
> The second point follows from the first. The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case but also of a reserved judgment based upon notes, such as was given by the district judge. These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account."

29. I turn to consider the specific challenges to the Judge's findings in light of the above legal principles.

The finding that Alice would have purchased another property

30. The Judge's finding that, but for the assurances from the Chief that the Property was hers, Alice would have purchased another property in her own name, was based on the following:

(1) The plea in the amended defence and counterclaim that she made significant financial and non-financial contributions to the Property on the understanding it was hers instead of taking steps to acquire another property in her own name. The financial and non-financial contributions included taking sole responsibility for the maintenance and upkeep of the Property such as redecorating and replacing the front door in 1994, paying outgoings including council tax and other bills, and the renovations in 2016 (including the replacement of the boiler for which she paid, and the repair works for which Ike and Chinwe paid).

(2) Alice's witness statement which, among other things, stated the following:

a) When the children had grown up the Chief told her she should work in order to cover some of the household expenses.

b) She worked from 1993 until 2005, earning from, at the beginning, £90 to £100 per week and, by the end of that period, £800 to £900 per month (although this was corrected in evidence to being a weekly wage, and being in addition – at least for some of the time – to a wage of £600 to £700 per week from a second job).

c) In 1994 she paid for the Property to be redecorated and for replacement wallpaper, carpets and front door. From 1996, having been told to do so by the Chief, she paid bills for gas, rates and other household expenses.

d) On many occasions, she asked the Chief for money for household expenses, but he replied: "you live here. This is your house. You pay for it." On one occasion in 2004 when she wished to return to Nigeria, the Chief "…refused me to return to Nigeria and said "I had to look after the property" as the property was basically mine and that there was no-one else to look after the property".

e) "If I had not been given any assurances by the deceased, then I would certainly have taken steps to buy a property in my name when I was working and earning sufficient income to obtain a mortgage."

(3) Various passages in Alice's cross-examination including that to which I refer below.

31. The Judge expressed his finding, at [52], as follows:

> "The Claimant had a fair opportunity to meet this case. The First Defendant was cross-examined along the lines that given her age being in her early fifties at the time and her modest income, it was unrealistic to suppose that she would obtain a mortgage loan. She said it would be a buy-to-let mortgage, I take judicial notice of the fact that requirements for borrowers were not onerous and getting a mortgage was a realistic aspiration for her and I accept her evidence that absent the representation she would have done so."

32. The claimant does not suggest that the Judge was wrong to accept that Alice was genuine in her belief that, but for the assurances, she would have taken steps to buy a property in her name. His contention is that the Judge nevertheless erred in his finding that she would have done so. There were three strands to Mr Williams' submissions in support of that contention.

33. First, he submitted that there was insufficient evidence as to when Alice would have purchased a house, what the price would have been, where it would have been located (e.g. England or Nigeria) and whether it would have been purchased to live in or as a buy-to-let property. While I accept that there was no evidence of these matters, I do not regard that as undermining the Judge's conclusion. By reason of the assurances made to her, Alice never had to give consideration at the time to any of these points. It is not surprising that to the extent that she was asked about these matters 15-20 years after the event she would only have been able to speculate.

34. As *Henry v Henry* (above) demonstrates, it would be unreasonable to expect chapter and verse as to the hypothetical counterfactual where the essence of the pleaded case is that in reliance on the assurances Alice refrained from using the funds, which she in fact spent on the Property, to purchase another property for herself. In *Henry* there was little more than the assertion by the claimant that he would (but for the promises made to him) have moved away for a better life. No details were provided (or required by the court) as to how he might have achieved that.

35. Mr Williams' criticism of the Judge's finding that Alice would have purchased a house as a buy-to-let property is based on an analysis of passages in her cross-examination. By reference to the transcript alone, it may be said that some of Alice's answers appear to be self-contradictory and confused. This is a good illustration, however, of the importance of deferring to the trial Judge's findings where the Judge has been immersed in the facts and evidence and has seen and heard the witness. That is particularly so in the case of a witness such as Alice, for whom English is not a first language. It is evident from a number of passages in her cross-examination that she had difficulty in understanding some of the questions put to her.

36. Mr Williams relies in particular on the following passage in the cross-examination:

> Q: So, if the chief hadn't given you – hadn't said something along the lines of, "This house is yours", if he hadn't said – him saying that, at some point, when your earnings are at their highest, or – I mean, to be fair, you haven't said when they're at their highest; I'm trying to make that favourable to you – but, at some point around then, you would've just – would you have left him?
>
> A: I would've left the chief, I would've left the chief."
>
> Q: That's what I'm saying; would you have left the chief? You would've just moved away from him and not seen him again in this other house, and you would've lived in this other London house?
>
> A: I could buy a house and rent it."

37. Looking solely at the words on the page, they might indicate her acceptance that she would have moved out of the Property into a new home. Mr Dubbery (who had, like Mr Williams, been at the trial) submitted, however, that the way in which Alice answered the question whether she would have left the Chief was with incredulity, as if a question mark were placed at the end of the repeated phrase "I would've left the chief?". That is corroborated by the fact that when the question was then asked again, her response was to refer to buying a house and renting it. By reference to the exchange immediately following this passage, it is clear that when Alice said "I could buy a house and rent it" she meant that she could have let it out to make money. Thus, after the ambiguity in this answer was addressed (i.e. whether she would have rented, instead of buying, a property, or whether she would have bought it to let out, so as to repay a mortgage) she was asked "So, you would've bought a house, but you wouldn't have lived in it yourself?" and she answered: "Yes, to make money".

38. Second, Mr Williams submitted that there was insufficient evidence that Alice *could* have purchased a home, even if she had wanted to. There was, he said, no or no sufficient evidence that she could have obtained a mortgage offer, or would have had enough money to pay the deposit or to discharge a mortgage.

39. I do not accept that the Judge's finding that getting a mortgage was a realistic aspiration for her was one he could not reasonably reach. It was reasonable for him, in particular, to take judicial notice of the far less onerous requirements for obtaining a mortgage in the first years of this century compared to now. Her age and earning ability would have been less of an obstacle than they might otherwise have been, given that the property would have been acquired as a buy-to-let.

40. As I have already noted, the relevant question concerns a counter-factual which she never had to give thought to at the time because of the assurances made to her that the Property was hers. The essence of her case is that, had those assurances not been made, she would have sought to protect herself by using her own money to fund another house rather than spending it on the Property. That does not mean that she has to establish that she could have obtained a mortgage and purchased another house immediately. She may well

have found that it took time to build up her savings for a deposit. Had she not been using her money to spend on the Property then, by definition, she would have had more available funds.

41. Third, Mr Williams submitted that there was no or no sufficient evidence as to whether she would have obtained the Chief's consent. Mr Dubbery objected that there was no evidential foundation for the assertion that Alice would have required the Chief's consent before purchasing another home. Mr Williams pointed to the following passage in Alice's evidence during cross-examination:

> "If the chief would allow me to move to Nigeria. I have a – I come – I have (inaudible) there in Nigeria; I can start to – if the chief allow me at that time I want to go, I go back to Nigeria…"

42. This reflects a point made in her witness statement that when she said (in 2004) that she wanted to go back to Nigeria, the Chief would not allow her to do so. It is an unwarranted leap to suggest that this evidence demonstrates she would have needed the Chief's consent to purchase a property. That is particularly so when his refusal to let her go to Nigeria was coupled with the comment that she should stay and look after the Property which was "hers". In the counterfactual that he has not made such an assurance, I do not accept that there is any evidential basis for the assertion that before she could use her money to fund a property to secure her own future, she needed the Chief's consent. In those circumstances, her honest and reasonable answer that she did not know what the Chief would have said, had she asked him whether she could buy her own home, is irrelevant.

43. For the above reasons, I reject the contention that the Judge's finding that, in the context of a counter-factual where she was living in a house belonging to her elderly husband from which she could expect to be evicted when he died, she would have acquired a property to protect herself against that eventuality was based on insufficient evidence or was a perverse conclusion. In light of this conclusion, the contention that spending approximately £5,000 for a replacement boiler is insufficient detriment by itself falls away.

Detriment: the funding of the renovations to the Property in 2016

44. I deal next with the point raised by the Respondent's Notice that the Judge ought to have concluded that Alice also suffered detriment in relation to the money spent on the renovations in 2016. His reason for rejecting that contention was shortly stated: "the renovations were funded by third parties."

45. The evidence on this point was as follows:

(1) In her amended defence and counterclaim, Alice pleaded that she took it upon herself to fund the works using her own savings and monies gifted to her by her son, Ike, and his wife.

(2) In the separate defence and counterclaim filed by Ike and Chinwe it was also pleaded that they had gifted the money to Alice for the renovations. They also sought a declaration that as a consequence they had a beneficial interest in the Property. That claim was not, however, pursued.

(3) In her witness statement, Alice stated that Ike and Chinwe gave her in the region of £50,000 to carry out the necessary works, which she would not have carried out if she did not believe the Property was hers.

(4) In his witness statement, Ike said that any contributions he made in relation to the improvements were made on behalf of his mother: "The monies given to undertake the works were give [sic] by way of a gift to [his mother]". He stated for the avoidance of doubt that he and Chinwe were not seeking to claim any beneficial interest in the Property.

46. Mr Dubbery submitted that in light of this evidence, since the cost of the renovations was a gift from Ike and Chinwe to Alice, the expenditure on the renovations was plainly a detriment to Alice irrespective of the fact that the funding came from Ike and Chinwe.

47. Mr Williams contended that Alice's case on this had been confused throughout. He referred me in particular to two passages in her cross-examination:

(1) First, the following exchange:

> "Q. Now, in your – if we look again in your defence – sir, I think this is going back to page 14 – so, in paragraph – we were looking at paragraph D, so I'm just going to look at this again in the light of what you've told His Honour. "On or around from July 2016, the first defendant – that's you- carried out works and improvements to the property, to the cost of between £50,000 and £60,000". Just pausing there, that's not actually right, is it: what you did was to pay for a boiler of £4,000 or £5,000 but it was actually Ike and maybe Chinwe who carried out those works and improvements, to a cost of something like £50,000? That's right isn't it?"
>
> A: I don't know how to explain that, the question."

(2) Second, the following exchange, after it was clarified that Alice, together with Ike and Chinwe chose the various things needed for the renovations:

> Q. Ok, but Ike paid for it all and arranged it all, and, in the light of that, would you agree with me that it's simply not right when you say, "The first defendant carried out repairs and improvements to the property to the cost of between

> £55,000 and £60,000"? That's – I must be right in saying that surely?
>
> A. Yes, this is what we spent."

48. Apart from the fact that Ike and Chinwe originally claimed a beneficial interest in the Property by reason of the payments they made for the renovations, Ike's and Alice's evidence was consistently to the effect that Alice paid for the boiler and Ike and Chinwe paid for the remainder of the works, but they did so by way of gift to Alice. In the first passage from Alice's cross-examination to which Mr Williams referred me, her response that she did not know "how to explain that, the question" was not surprising. The question had rolled up three matters: (1) who carried out the works; (2) who paid for the works; and (3) what they cost. As to the second passage, while it is true that Alice's evidence that "we" spent the money lacks precision as to who physically paid the money, it is nevertheless consistent with her and Ike's evidence that although he physically paid the suppliers and tradesmen, it was treated as a gift to her.

49. I do not understand the Judge to have rejected Alice's and Ike's evidence that the payment by Ike for the renovations was intended to be by way of a gift to Alice. He certainly does not say so in terms. Indeed, since it is common ground (at least it was common ground in the evidence) that it was Alice alone who was asserting any claim to a right of ownership or occupation in respect of the Property, the payment was most likely to have been intended as a gift to her.

50. Accordingly, the Judge's conclusion on this point is to be understood as being that, notwithstanding Ike and Chinwe intended to confer a gift on Alice by paying for the renovations, the fact that it was them, and not Alice, that made the payments meant that those payments were incapable of amounting to a detriment in the relevant sense so as to give rise to an equity pursuant to the doctrine of proprietary estoppel.

51. I consider that this conclusion was wrong. Alice had the good fortune to benefit from her son's bounty. Her acquiescence in that bounty being directed towards payment for renovations on the house, rather than in some other way, is in my judgment a detriment in the relevant sense. In the counterfactual where the assurances had not been made, Alice's occupation of the property following the Chief's death was highly precarious. She was at risk of being evicted whenever control was taken of the Chief's estate. What she lost was the opportunity to benefit from her son's bounty in a different way.

52. Mr Dubbery provided the analogy of two sets of parents of a newly-wed couple. As wedding gifts, one set of parents buys a house in need of repair for the newly-weds, and the other pays for the repairs. In those circumstances, he submitted that the newly-weds would have suffered a "detriment" from the payment for the repairs as much as if they had been gifted the cash equivalent and paid for the repairs themselves. I agree that this is a reasonable analogy with the facts of this case.

Countervailing benefit and the appropriate relief

53. I deal with the question of countervailing benefit together with the question of the appropriate relief and proportionality. To do otherwise would risk over-compartmentalising the different elements of proprietary estoppel. As Robert Walker LJ noted in *Gillett v Holt* (above) at p.225D: "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." In *Davies v Davies* (above, at [38(vii)]), the Court of Appeal referred to the need to weigh the detriment against countervailing benefits "in deciding how to satisfy the equity".

54. In some cases, it may be that the countervailing benefits wholly outweigh the detriment so that no equity arises. In other cases, the countervailing benefit may lead to the conclusion that the equity has expired, or that the monetary value of the relief to satisfy the equity should be reduced.

55. In this case, where the countervailing benefit is alleged to be Alice's rent-free occupation of the Property, it is impossible to disentangle it from the question of the appropriate relief. But for the delay in the grant of Letters of Administration, the question whether Alice was entitled to a life interest pursuant to the doctrine of proprietary estoppel based on assurances made during the Chief's lifetime would have been resolved at a much earlier stage. If at that time the appropriate remedy would have been the grant of a life interest to Alice, then her occupation of the Property between 2007 and today would have been justified on that basis and no question of countervailing benefit could have arisen. The position should be no different simply because the issue is being determined many years later as a result of the estate's delay in taking steps to evict her from the Property: if the appropriate relief is the grant of a life interest, then the rent-free occupation of the Property to date cannot sensibly be regarded as a countervailing benefit.

56. If, on the other hand, the appropriate relief is either a monetary award or some other relief valued by reference to the value of the detriment suffered, then it may be appropriate to offset the value of rent-free accommodation against that award.

57. Mr Williams' principal contention is that the Judge's conclusion that Alice's "rent-free" occupation of the Property raising the children was not a countervailing benefit was wrong. As such, the Judge failed (in the words of Sir Jonathan Parker in *Henry v Henry*) to "weigh the disadvantages which the claimant has suffered by reason of his reliance on the defendant's assurances against the countervailing advantages which he had enjoyed by reason of that reliance".

58. Furthermore, he submitted that the Judge was wrong to conclude that there were no countervailing benefits aside from living rent-free in the Property when raising children, because there had been no children under the age of 18 in the Property since 1997 (and no children at all since 2004). Taking the current rental value of the Property (according to a valuation report of the JM Valuation Group), that constituted a benefit in monetary terms of £30,000 p.a.

for 14 years (taking the later date), totalling £450,000. The value of the benefit was £630,000 if measured from 1997.

59. On the question of remedy, Mr Williams' principal submission was that the grant of a life interest was wholly disproportionate to detriment which consisted only of the payment of £5,000 for a boiler. I need not consider this point further, given my conclusions that the Judge (1) was justified in concluding that Alice suffered detriment by not using her own funds to purchase another home for herself and (2) ought to have concluded that the payment of £50,000 for the renovation of the Property was also a relevant detriment.

60. Mr Williams nevertheless contended that the Judge erred in law in the exercise of his discretion to grant Alice a life interest in the Property for the following reasons:

    (1) The Judge appears to have awarded a life interest in line with Alice's expectations. That was not a sufficient reason to grant a life interest, as the aim of the relief is to satisfy the equity, not the expectations.

    (2) Even in cases of a clear expectation, the court should not give effect to it where it is extravagant or out of all proportion to the detriment suffered, which was the case here.

    (3) The lack of proportionality here is demonstrated by the fact that, for very limited detriment (even with the lost opportunity to purchase her own home factored in) Alice was awarded a life interest with a commercial value of £30,000 per year.

61. Even if the fact that Alice had lived rent-free in the Property for so long did not extinguish entirely the detriment suffered by her, Mr Williams contended that it ought to have persuaded the Judge that any equity which had been created had long ago expired. He referred in this context to *Sledmore v Dalby* (1996) 72 P & CR 196. In that case, a son-in-law remained living in a property owned by his wife's parents long after her death. The County Court judge found that upon his wife becoming ill in 1976 he continued to occupy the property under an equity. He carried out works on the property between 1976 and 1979, and continued to live in it until 1990. The Court of Appeal concluded that the minimum equity to do justice to the son-in-law was an equity which had now expired.

62. I do not accept that the Judge was wrong in law to find that Alice's occupation of the Property (whether from 1984, 1997 or 2004) was not a countervailing benefit.

63. In the first place, I do not accept that Alice's occupation of the Property was an advantage enjoyed in consequence of the relevant assurances. In cases such as *Jennings v Rice* or *Henry v Henry*, living rent-free in the relevant property was a direct response to the assurances. In *Jennings*, J's occupation of R's property was a direct consequence of his reliance on assurances from R. Similarly, in *Henry*, the claimant's continued occupation of the land, rather

than moving elsewhere to create a better life, was a direct consequence of relying on the assurances.

64. In contrast, in this case Alice's occupation of the Property, certainly at all times while the Chief was alive, was simply the consequence of her marriage to him. I agree with Mr Dubbery that to describe the occupation of the family home by a spouse who has raised the children of the marriage as "rent-free accommodation" is both inapt and unattractive. Mr Williams recognised the difficulties in this characterisation during the period Alice was raising the children, and focused his submissions accordingly on the position after the last of the children had reached 18 or left home. I do not, however, think that such a distinction can be drawn. Her occupation of the matrimonial home is explained throughout the period of the Chief's life by the fact she was married to him. Although Alice's status as a "customary" as opposed to "statutory" wife was pointed out, no reason was provided why this should affect the legal analysis. It would be rare for there to be any expectation that one spouse would pay rent to the other for occupation of the marital home, just because it was the legal and beneficial property of the other. It would equally be inappropriate, therefore, to characterise a spouse as living "rent-free" in that property.

65. Although the Judge did not spell this out when declining to find there was any countervailing benefit, expressing his conclusion very shortly, it is reflected in his finding that Alice's decision to stay in England (rather than move back to Nigeria) was not a relevant detriment because "she stayed because her husband asked her to. This was a customary marriage in which she did what he asked her to do."

66. That leaves the period of occupation after the Chief had died. Following that point, although at one level Alice's continuing occupation is to be explained by the fact that she had been married to the Chief (she was simply continuing to live in the matrimonial home), I accept that in the circumstances of this case, it could more aptly be described as a benefit "enjoyed by reason of the reliance" on the assurances.

67. As I have already noted, whether this should be regarded as a countervailing benefit which either prevents an equity arising, causes the equity to have expired or reduces the value of any relief is closely intertwined with the question of appropriate relief.

68. The Judge dealt with the appropriate remedy very briefly, at [56] to [57]:

> "What is the equity? It does not turn on whether there was a *quasi* bargain. She had a reasonable expectation to remain as long as she wishes. The equity is best satisfied by satisfying her expectation and granting a life interest."

69. Mr Williams is correct to contend that the function of the relief is to satisfy the equity, and not the expectation. That was made clear by Robert Walker LJ in *Jennings v Rice* (above) at [49]. Although the Judge only explained his conclusion in the briefest of terms, it is clear that he was conscious that the

correct question was how to satisfy the *equity* (a question which he had already identified at [39] of his judgment).

70. In considering that question, the nature of the expectation nevertheless plays an important part. As the Court of Appeal concluded in *Davies* (above), a useful working hypothesis is a sliding scale, by which the clearer the expectation, the greater the detriment and the longer the passage of time during which the expectation was reasonably held, the greater the weight to be given to the expectation.

71. Like the Court of Appeal in *Davies* (although in different circumstances) I do not think it is necessary to decide between the two opposing lines of authority, one of which favoured giving effect to the claimant's expectation unless it was disproportionate to do so and the other favoured compensation for the detriment suffered. The latter approach is difficult to apply where the detriment cannot readily be quantified. That is so here, where the detriment included refraining from acquiring an alternative property from which she could have benefitted after the Chief's death.

72. In this case, having regard to the sliding scale referred to in *Davies*, the following factors point towards placing considerable weight on the expectation:

    (1) The expectation that Alice could live in the Property for her life was, on the Judge's findings, not only something which Alice could reasonably rely upon, but was close to a consensual bargain. The Judge found (at [49]) that the Chief's representations were both meant by him to convey that the Property was hers to occupy for as long as she wished and understood by her in that sense.

    (2) The expectation was held over a very long period of time, having first been induced in her by the Chief's assurance in 1984. At no time did the Chief say or do anything to contradict that assurance. He repeated the assurance shortly before his death. Thereafter, nothing was done by or on behalf of the estate to undermine Alice's expectation until 2018. In the meantime, Alice suffered the further detriment of the expenditure of £50,000 on the Property.

73. In light of these points, I reject Mr Williams' contentions that the expectation was either unclear or extravagant or out of all proportion to the detriment suffered. Having regard to all of the elements of proprietary estoppel in the round, I consider that the Judge's conclusion that the equity was best satisfied by satisfying the expectation was one which he was entitled to reach in the exercise of his discretion.

74. In those circumstances, Alice's occupation of the Property rent-free since the Chief's death is not a countervailing benefit which either eliminates the equity (or causes it to have expired) or should be taken to reduce the value of the relief to be granted in satisfaction of the equity. Accordingly, although the point could have been more fully explained by the Judge, I do not think that he fell into an error of law in refusing to take account of it as a countervailing

benefit in any of the ways for which the claimant contends. The facts of this case bear no relation to those in *Sledmore v Dalby*, where the only evidence of detriment was for a small period many years ago, where the claimant had reaped the benefit of the works he carried out by living rent free in the property for 15 years and where the defendant had a pressing need to occupy the property.

Conclusion

75. For the above reasons I dismiss this appeal.