Company – Striking-off and dissolution – Property vesting in Crown as bona vacantia – Crown disclaimer – Escheat – Whether former directors and shareholders entitled to vesting order – Whether Crown taking subject to equitable interest by proprietary estoppel – Law of Property Act 1925, s. 181 – Trustee Act 1925, s. 44 (ii) (c)

Neutral Citation Number: [2022] EWHC 3256 (Ch)

Case No: PT-2022-MAN-000071

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
IN MANCHESTER
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Thursday, 22 December 2022

Before :

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between :

(1) David William Dixon
(2) Keith Leslie Dixon

Claimants

- and -

The Crown Estate Commissioners **Defendants**

- -
- -

Mr Richard Oughton (instructed by **Bendles LLP**, Carlisle) for the **Claimants**
The **Defendants** did not appear and were not represented

Hearing date: Wednesday, 16 November 2022
Judgment handed down: Thursday, 22 December 2022

- -

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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HIS HONOUR JUDGE HODGE KC

Remote hand-down: This judgment was handed down remotely at 10.30 am on Thursday 22 December 2022 by circulation to the parties or their representatives by email and by release to The National Archives.

The following cases are referred to in the judgment:

Re Clariant AG and Clariant Plastics & Coatings (Ireland) Ltd [2020] IEHC 211
Re Eaves [1940] Ch 109
Guest v Guest [2022] UKSC 27, [2022] 3 WLR 911
Lizzium Ltd v The Crown Estate Commissioners [2021] EWHC 941 (Ch)
Pall Mall 3 Limited v Network Rail [2021] EWHC 1835 (Ch)
Pennistone Holdings Ltd v Rock Ferry Waterfront Trust [2021] EWCA Civ 1029
Quadracolour Ltd v Crown Estate Commissioners [2013] EWHC 4842 (Ch)
Scmlla Properties Ltd v Gesso Properties (BVI) Ltd [1995] BCC 793
Re Strathblaine Estates Ltd [1948] Ch 229
Taylors Fashions Ltd v Liverpool Victoria Trustees Co Limited [1982] QB 133
UBS Global Asset Management (UK) Ltd v Crown Estate Commissioners [2011] EWHC 3368 (Ch)
Re Wells [1933] Ch 29

Judge Hodge KC:

Introduction

1. By a Part 8 Claim Form, issued in the Business and Property Courts in Manchester on 20 May 2022, the claimants, Mr David William Dixon and his cousin, Mr Keith Leslie Dixon, seek orders vesting freehold properties at (1) 6 Rodham Terrace, Stanley, County Durham, which is comprised in registered title no DU 262770 (**Rodham Terrace**), in the first claimant, and (2) 25 Little Corby Road, Little Corby, Carlisle, which is comprised in registered title no CU 27867 (**Little Corby Road**), in the second claimant. The relief is sought under s. 181 of the Law of Property Act 1925 and s. 44 (ii) (c) of the Trustee Act 1925. The evidence in support of the claim is contained in the witness statement of the first claimant, dated 9 May 2022, made with the authority of his co-claimant, together with exhibits DWD 1 – 19.

2. The claim follows on from the striking-off and dissolution of the registered proprietor of the two properties, Dixon Prestige Homes Limited (**the company**). Prior to its dissolution (on 15 June 2010), the first claimant had been a 49% shareholder in the company, and the remaining 51% of the shares had been held by the second claimant. Both claimants had been directors of the company until 14 May 2007 when the second claimant resigned with a view to relocating his residence overseas; and the first claimant's daughter, Ms Paula Dixon, was appointed a co-director with the first claimant (and as the company secretary) in place of the second claimant. On 29 March and 26 April 2021 the Crown gave notice (under s. 1013 of the Companies Act 2006) disclaiming any interest in Little Corby Road and Rodham Terrace respectively which might have vested in the Crown as bona vacantia under s. 1012 of that Act, whereupon such interest vested in the defendants, the Crown Estate Commissioners (**the Commissioners**), a statutory corporation, by way of escheat.

3. By letter dated 22 July 2022, the Commissioners' solicitors, Burges Salmon, have written to the claimants' solicitors, Bendles LLP, acknowledging receipt of the Claim Form and confirming that the Commissioners do not oppose (whilst not supporting) the claim and will not be represented at the hearing. The letter explains that

> Where freehold land is disclaimed by the Treasury Solicitor, the land may be deemed subject to escheat to the Crown, and we act for the Crown Estate in relation to such matters. Longstanding legal advice to the Crown Estate Commissioners is that if they undertake no act of possession, entry or management, no liability or responsibility in respect of the property arises in the circumstances of escheat. Please note that neither this letter nor any other communication in the matter shall be deemed to constitute such an act.

4. As foreshadowed by this letter, the Commissioners did not appear, and were not represented, at the hearing before me. As a result, the first claimant has not been cross-examined on his witness statement, which stands as his unchallenged evidence. The claimants were represented by Mr Richard Oughton (of counsel), who has produced a detailed, and helpful, written skeleton argument, dated 7 July 2022, which was originally prepared for the case management hearing which had taken place before District Judge Matharu on 13 October 2022, pursuant to which this final hearing was listed before me on 16 November 2022. Mr Oughton recognises that even though the

Commissioners do not actively oppose the relief sought by the claimants, the court must be satisfied that the claimants are entitled to that relief.

Background

5. The claimants were builders and property developers, generally operating in the Carlisle area, who caused the company to be incorporated in 2002. The company successfully completed several high class residential developments and generated profits which led to it having substantial cash assets. The company also purchased the two properties, Rodham Terrace (for £43,000) in November 2003 and Little Corby Road (for £216,000) in December 2007. Both properties were at all times free of mortgage and were let to residential tenants. From about June 2006 until September 2008 there were amicable discussions between the claimants about separating their interests in the company. The second claimant was about to retire abroad and he was intending to become non-resident for tax purposes. To this end, the claimants consulted Mr David Allen, who acted both as their accountant and as the accountant for the company. Mr Allen advised the claimants (entirely correctly) about the various options available to them. The claimants eventually elected to have the company wound up, with the assets to be distributed to them in specie. The company was entirely solvent and it had no debts. A distribution upon a winding up would not lead to any charge to income tax to the shareholders in respect of the sums distributed, but it would lead to a disposal of the shares in the company for the purposes of capital gains tax (**CGT**). Whilst the first claimant would pay CGT, the second claimant would not because he was non-resident.

6. On the basis of the company's unaudited abbreviated accounts, prepared by David Allen & Co, for the year ended 30 September 2008, and after accounting for the claimants' loan accounts, the total value of the second claimant's interest in the company was £538,858.60 whilst the first claimant was entitled to £393,408.59. As explained by the first claimant at paragraph 10 of his witness statement, it was agreed that: (1) the second claimant's entitlement would be satisfied by Little Corby Road, valued at £219,105.22, and cash of £319,753.38; whilst (2) the first claimant would receive Rodham Terrace, valued at £122,307.55, and cash of £271,101.04. These sums are evidenced by the contemporaneous estimated distribution schedule prepared by Mr Allen at DWD 14.

7. The subsequent history of events is related at paragraphs 11 (and following) of the first claimant's witness statement. The claimants' mutual understanding was that the distribution was lawfully effected on or soon after 30 September 2008 when the second claimant received £319,753.38, and the first claimant received £271,101.04, in cash from the company; and they both believed that Little Corby Road and Rodham Terrace had been transferred to the second and first claimants respectively. Both claimants relied upon the assurances of Mr Allen that this was indeed what had happened. In the belief that there had been a valid distribution of capital from the company, the first claimant paid CGT of £45,452.88 for the tax year ending 5 April 2009. The second claimant paid no CGT upon his distribution of capital from the company because he was not resident within the United Kingdom.

8. In the belief that the company had no assets, on 18 January 2010 the first claimant and his daughter, as the company's directors, made an application (in Form DS01) applying for the company to be struck off the Register of Companies in accordance with s. 1003

of the Companies Act 2006. On 2 March 2010, the Registrar of Companies gave formal notice to the company's directors that unless cause was shown to the contrary, at the expiration of three months the name of the company would be struck off the register and the company would be dissolved. The Company was duly dissolved on 15 June 2010.

9. It has since come to the claimants' attention that two serious errors were made in relation to the dealings with the company. The first is that no resolution was ever passed for a members' voluntary winding-up and no liquidator was ever appointed. Indeed, none of the requirements for a winding-up were ever satisfied. The claimants had relied upon Mr Allen and his accountancy practice; and they had assumed that the correct procedures had been followed at all times. When they consulted their present solicitors about the two properties in 2021, both Bendles and counsel initially proceeded upon the basis that there had been a voluntary winding-up but that the relevant documentation was simply not to hand. It was only in December 2021, when counsel did a search on the internet of the company's file on the Companies' House web-site, that it was discovered that the correct procedures for a voluntary winding-up had not been followed at all.

10. The second error is that neither Rodham Terrace nor Little Corby Road were ever transferred out of the name of the company, which remained the registered proprietor of each property at HM Land Registry. Again, the claimants had relied upon Mr Allen and his practice; and they had assumed that the correct procedures to transfer ownership had been followed at all times. After September 2008, the second claimant had treated Little Corby Road as being owned by him personally; and the first claimant had treated Rodham Terrace as being owned by D. & P. Dixon Land and Properties Limited, which was a company he had set with his daughter, Paula. Rodham Terrace was shown in the accounts of D. & P. Dixon Land and Properties Limited as being owned by that company. Both properties were let on residential tenancies. The second claimant paid income tax on the rent of Little Corby Road, and D. & P. Dixon Land and Properties Limited paid corporation tax on the rent of Rodham Terrace. The problem only came to light in late 2020, when D. & P. Dixon Land and Properties Limited negotiated the sale of Rodham Terrace, and it was found that the registered proprietor remained the company.

11. The claimants believe that the effect of the dissolution of the company was that the legal title to the two properties vested in the Crown pursuant to s. 1012 of the Companies Act 2006. They instructed Bendles LLP, as their solicitors, to act for them in relation to recovering title to the two properties. Bendles corresponded with the Treasury Solicitor, who had not been previously aware that the legal title to the two properties had passed to the Crown as bona vacantia. As a result of being informed that the legal title to the two properties was bona vacantia, the Treasury Solicitor decided to disclaim the two properties, pursuant to s. 1013 of the Companies Act 2006. This was against the claimants' wishes. On 29 March 2021, the Treasury Solicitor disclaimed Little Corby Road; and on 26 April 2021 the Treasury Solicitor disclaimed Rodham Terrace. After the disclaimers, the legal title to each property vested in the Crown Estate Commissioners.

12. The claimants invite the court to make orders under s. 181 of the Law of Property Act 1925 and s. 44 (ii) (c) of the Trustee Act 1925 vesting Rodham Terrace in the first claimant and Little Corby Road in the second claimant. The claimants have been

advised that they may need to show a proprietary interest in each property for the purposes of making such an order. At all times after 30 September 2008 the claimants had believed that each of the two properties had been distributed to them as part of their respective entitlements to the company's assets. They had held that belief as a result of what Mr Allen had told them; and they had relied upon him totally. At paragraph 17 of his witness statement, the first claimant asserts that the claimants acted to their detriment in reliance upon their belief in that: (1) the second claimant had allowed the first claimant to receive £96,798 more than he had received from the company because they had both believed that the first claimant would receive a more valuable property; (2) the first claimant paid CGT for the tax year ending 5 April 2009 upon the basis that he had received a capital distribution from the company, and he further used up a significant part of his entrepreneurs' allowance; (3) the claimants caused the company to be dissolved in the belief that it had no assets; and (4) the claimants did not apply within the six years allowed by s. 1030 (4) of the Companies Act 2006 for the company to be restored to the register because they had believed that the company had no assets because the two properties had already been transferred to themselves.

13. During the course of oral submissions, I pointed out to Mr Oughton that the assertion noted at sub-paragraph (1) above that the second claimant had allowed the first claimant to receive £96,798 more than he had received from the company because they both believed that the first claimant would receive a more valuable property is not consistent with the evidence that is before the court. Mr Oughton acknowledged that this was so; but he pointed out that on any view, the claimants had each received cash sums that had been calculated on the assumption that they would each receive properties of different values. By my calculations, the second claimant should have received some 57.8% of the company's net assets, and the first claimant the remaining 42.2%; but, in cash terms, they in fact received some 54.12% and 45.88% respectively.

14. The first claimant notes in his witness statement that one possible analysis of what happened in September 2008 was that the company made a 'distribution' to its shareholders which was potentially subject to income tax at that time. He indicates that the claimants intend to instruct their solicitors to write to HMRC to draw attention to the claimants' possible liability for tax in relation to the distribution of assets from the company in 2008, and to their contention that HMRC is out of time for making any assessment. The claimants are prepared to offer an undertaking to the court, within 28 days from the date of any order, to inform HM Revenue and Customs in writing that: (a) there was no valid winding-up of the company on 30 September 2008 or at all; (b) there may have been a distribution to the claimants within the meaning of s. 1000 of the Corporation Tax Act 2010 (or its predecessor section) on or about 30 September 2008, with a consequent potential liability of the claimants to income tax; provided that nothing in that undertaking should prevent the claimants from relying upon any limitation period properly available to them.

Company dissolution, disclaimer and escheat

15. By s. 1012 (1) of the Companies Act 2006, when the company was dissolved on 15 June 2010, all its property and rights were deemed to be bona vacantia and accordingly belonged to the Crown and vested and might be dealt with as such. However, there is an express exception in respect of *"property held by the company in trust for another person"*. When the Treasury Solicitor disclaimed the two properties, in March and April 2021 by notices executed under s. 1013 of the 2006 Act, any interest in them

previously held by the Crown as bona vacantia became vested in the Commissioners by way of 'escheat'.

16. Mr Oughton explains that escheat is the way in which certain estates in land return to the Crown in the event of land being ownerless or the owner ceasing to exist; and that one of the ways in which an escheat arises is when the Crown disclaims property which has vested in it as bona vacantia in accordance with s. 1013 of the 2006 Act. This causes the property to 'boomerangs back' to the Commissioners; but, as Mr Oughton points out, there is method in this apparent madness because the Commissioners are under fewer obligations in relation to the land than the Crown when taking as bona vacantia. Mr Oughton also explains that when property passes by escheat, the Commissioners take subject to all incumbrances, including trusts.

17. I have no doubt that these propositions are well-founded. As Lewison LJ explained (when delivering the leading judgment in *Pennistone Holdings Ltd v Rock Ferry Waterfront Trust* [2021] EWCA Civ 1029 at [18-22]):

> **Escheat**
>
> 18. Escheat is one of the last relics of feudal law. It is based on two propositions: (a) that all land in England is held of the Crown and (b) that no land can be without an owner. The first of these reflects the basic principle of tenure; namely that all land in England is owned by the Crown and that at some point in the past the Crown granted that land to a feudal tenant in chief. If the granted interest comes to an end, the land reverts to the Crown.
>
> 19. In the case of a corporation governed by the Companies Act 2006, the mere fact of its dissolution does not result in an escheat. Instead of escheat, what section 1012 of the Companies Act 2006 provides for is the vesting of 'all property and rights whatsoever' of a dissolved company in the Crown as bona vacantia. Section 274 of the Isle of Man Companies Act 1931 contains a similar provision. Under those laws it is only if there were to be a disclaimer of the land (either by a liquidator or by the Crown once it had acquired the land as bona vacantia) that an escheat would result.
>
> 20. Toluca was an Isle of Man company, dissolved under Manx law. So the Companies Act 2006 did not apply to it. Nevertheless, land in England is subject to English law; not the Isle of Man Companies Act. Consequently neither the Companies Act 2006 nor the Isle of Man Companies Act 1931 govern the fate of the land. The editors of *Megarry & Wade on Real Property* (9th ed) para 2-025 take the view that where the corporation dissolved is not governed by the Companies Act there will be an escheat of its real property in England. That is, I think, why it was common ground that on the dissolution of Toluca there was an escheat of the land. The effect of an escheat is that the freehold interest is terminated
>
> 21 Following an escheat, a transfer by the Crown creates a new freehold interest. That explains why a new registered title is created.

> 22. Curiously, however, although an escheat terminates an existing freehold interest, it does not terminate derivative interests, such as leases or mortgages created out of that freehold: *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793. It has been assumed that this principle applies to the equitable interest in the freehold created by the transfer from Toluca to Pennistone. We did not hear any argument on this point; but I am prepared to proceed on that assumption.

18. The editors of *Ruoff & Roper on the Law and Practice of Registered Conveyancing* discuss the law of escheat at para 40.009. They note that:

> For reasons which are hard satisfactorily to explain, but which are enshrined in authority, escheat does not determine any subordinate interests in the land, such as charges or leases, or incumbrances, and they will affect the new freehold estate.

Foot-note 6 notes that in *Pennistone* at [22] the court was prepared to proceed on the assumption that this included an equitable interest in the freehold created by an unregistered transfer by the registered proprietor.

19. I note that by s. 8 (3) of the Crown Estate Act 1961, where land escheats to the Crown (or one of the Royal Duchies), it vests accordingly, *"and may be dealt with, and any proceedings may be taken in relation to it, without the title by escheat being found of record by inquisition or otherwise."*

20. The judgment of Mr Stanley Burnton QC (sitting as a deputy judge of the Chancery Division) in *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793 contains (at 806B-808C) a learned discussion of the effect of escheat on subordinate interests. The deputy judge recognised the logic of the submission that the effect of escheat was to determine all subordinate interests:

> It is indeed difficult to understand how a subordinate interest, created out of a freehold, can survive the termination of the freehold interest, any more than a sublease can survive the determination of a head lease.

However, the deputy judge felt bound to reject that submission because both case law, and (with one exception, which he could not regard as authoritative) textbook authority, all favoured the survival of derivative interests:

> I should not assume that the judges of the 18th and 19th centuries misunderstood the legal position of subordinate interests on escheat, or that the legal writers to whom I have referred, other than Professor Jenks, were mistaken in their accounts of the history of English land law.

21. This analysis has been accepted, in later cases, as an authoritative statement of the law. Apart from Lewison LJ's observations at [22] of *Pennistone*, in his judgment in *UBS Global Asset Management (UK) Ltd v Crown Estate Commissioners* [2011] EWHC 3368 (Ch) at [8] Roth J stated that when land owned by an overseas company escheats to the Crown on its dissolution, the Crown takes the land subject to subordinate interests, referencing Mr Stanley Burnton QC's *"very helpful discussion of escheat considering a range of old authorities"* in *Scmlla*. More recently, in *Pall Mall 3 Limited*

v Network Rail [2021] EWHC 1835 (Ch) at [60], Chief ICCJ Briggs said that the deputy judge in *Scmlla* had *"provided reasoning that has stood good for more than 25 years"*, including his conclusion (at [66 (4)]) that *"subordinate interests in the land survive escheat"*.

22. I therefore hold that where there is an escheat to the Crown (or, where the land falls within their boundaries, to one of the Royal Duchies of Lancaster or Cornwall) as mesne lord, subordinate interests, of whatsoever nature, survive.

Vesting orders

23. The claimants seek vesting orders under s. 181 of the Law of Property Act 1925 and s. 44 (ii) (c) of the Trustee Act 1925. S.181 is headed '*Dissolution of a corporation'*. It provides that:

> Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate.

S. 44 (ii) (c) provides that the court may make a vesting order in relation to land, or any interest therein, where a trustee entitled to or possessed of such land or interest, being a corporation, is dissolved.

24. Mr Oughton referred me to a number of authorities which, he submits, establish, at the level of the High Court, that a vesting order cannot be made under either s. 181 or s. 44 (ii) (c) unless the applicant can establish some legally enforceable right to the land. Whilst I consider that this submission is correct, it requires some further elaboration.

25. The leading authority on the making of vesting orders is the first-instance decision of Jenkins J in *Re Strathblaine Estates Ltd* [1948] Ch 229. A solvent company, which had agreed with its shareholders to distribute among them in specie certain properties which it owned, was voluntarily wound up and dissolved but, due to inadvertence, no steps had been taken to execute the necessary conveyances to the shareholders. On an application by the shareholders for a vesting order, and after hearing full argument from Mr Harold Lightman for the applicants and Mr Harold Danckwerts (later Danckwerts LJ) for the Attorney-General, Jenkins J held that as the company had become a trustee of the properties for the shareholders (because of the agreement to divide the company's unsold properties amongst them), a vesting order should be made under the provisions of s. 44 (ii) (c) of the Trustee Act 1925; and that s. 181 of the Law of Property Act 1925 had no application. Mr Oughton points out that the facts in that case were similar to those of the present case, save that the signed minutes of the directors' and shareholders' meetings, relating to the agreement to divide the company's unsold properties amongst the shareholders, were held to constitute sufficient written evidence to satisfy the requirements of s. 53 of the Law of Property Act 1925: see the argument of Mr Lightman at 229 and the judgment of Jenkins J at 230.

26. The arguments of counsel, and the judgment of Jenkins J, discuss the inter-relationship between s. 181 of the Law of Property Act 1925 and s. 44 (ii) (c) of the Trustee Act 1925. S. 181 had been enacted under what was said to have been the misapprehension,

current in 1925 but later criticised by the Court of Appeal, that when a company in possession of a legal estate is dissolved, that legal estate comes to an end and so has to be revived. Counsel for the Attorney-General explained in argument (at 229-230):

> S. 181 of the Law of Property Act 1925 is founded on the old theory of Lord Coke that the lands of a dissolved corporation revert to the transferor … There must always be an owner of the legal estate in a fee simple; if the owner corporation is dissolved, and the property is subject to a trust, the estate vests in the Crown as bona vacantia, subject to the trusts affecting it. An order under s. 44 of the Trustee Act 1925 is all that is required …

Jenkins J accepted this argument. Having found that the company had become a trustee of the properties for the shareholders, so that, prima face, the case was one to which s. 44 (ii) (c) of the Trustee Act 1925 applied, the judge continued:

> The matter is, however, complicated by s. 181 of the Law of Property Act 1925 which implies that when a corporation entitled to a legal estate is dissolved, the legal estate determines so as to make it necessary to create a new legal estate as a preliminary to any vesting order. Thus a note to Or. 53B, r. 4, appearing at p 1058 of the ***Annual Practice*** for 1946-47, states that an application for a vesting order must be made under the provisions of s. 181 of the Law of Property Act 1925 unless the company had held the land as trustee under an express trust. The theory that lands limited to a corporation in fee simple are held for an estate limited to continue only during the existence of the corporation and on its dissolution revert to the grantor through the consequent discontinuation of the corporation's terminable estate was approved in ***Hastings Corporation v Letton*** [1908] 1 KB 378; on the other hand the Court of Appeal in ***In re Wells*** [1933] Ch 29 appears to have been quite clearly of opinion that an estate limited to a corporation in fee simple does not determine on the corporation being dissolved. The view taken by the Court of Appeal in the latter case is in my opinion clearly to be preferred and it follows that the legal estate in fee simple is not to be regarded as having been determined by the dissolution of the company in the present case. This conclusion accords with the view expressed by the editor of the third edition of ***Challis' Real Property***, as set out at pp 467-468. If the legal estate in fee simple formerly vested in the company was not determined by the dissolution of the company but is still in existence, there can be no question of creating any new legal estate, and s. 181 of the Law of Property Act 1925 has no application.
>
> I was referred to s. 296 of the Companies Act 1929 *[now s. 1012 of the 2006 Act]* under which all property and rights of a dissolved company '(including leasehold property but not including property held by the company on trust for any other person)' pass to the Crown as bona vacantia, and it was pointed out that the fact that the properties here in question were held by the company in trust for the shareholders excepted them from the operation of this section. But, irrespective of s. 296 of the Companies Act 1929 if the legal estate in fee simple continued in existence, notwithstanding the dissolution of the company, I think it

> follows that, in default of any other owner, such legal estate must under the general law have passed to the Crown, subject to the trust, on the principle that there must always be some owner of a legal estate in fee simple. The right course in the present case therefore appears to be to make a vesting order simply under s. 44 of the Trustee Act 1925, and the summons should accordingly be amended by deleting all reference to the Law of Property Act 1925 …

This analysis indicates that if, at the time it was dissolved, a company was holding property in trust for another person, any application for a vesting order should be made under s. 44 (ii) (c) of the Trustee Act 1925, rather than s. 181 of the Law of Property Act 1925.

27. However, I would reject any wider implications of the decision in ***Re Strathblaine Estates Ltd*** and, in particular, any suggestion that it effectively deprives s. 181 of any real application or that it renders it a dead letter. The decision was considered by Mr Stanley Burnton QC in ***Scmlla*** at 800-801 in the course of considering, and accepting, the submission that escheat determines the freehold estate in the relevant land. The deputy judge noted that ***Re Strathblaine Estates Ltd***, and observations in the earlier case of ***Re Wells*** [1933] Ch 29, by Lord Hanworth MR at 47 and Romer LJ at 60 and following, appeared to be the only authorities for the survival of a freehold interest following escheat to the Crown. The deputy judge commented that in ***Re Wells*** the point had not been before the Court of Appeal: the case had concerned leaseholds rather than freeholds, and bona vacantia rather than escheat. The court had been concerned to reject the suggestion that on the dissolution of a company, its freeholds and leaseholds reverted to the grantor; and authorities on the question whether a freehold survived escheat had not been relevant and were not cited. In ***Re Strathblaine Estates Ltd*** the authorities on escheat had not been examined, presumably because the case had concerned the properties of a company which had been dissolved, and were therefore deemed to be bona vacantia. Jenkins J had been similarly concerned to reject the theory that land held by a dissolved company reverted to the grantor. He held that the freeholds of the dissolved company had vested in the Crown as bona vacantia; and there was no submission before him that the effect of such vesting had been to determine the freeholds; nor did he consider whether the effect of a freehold passing to the Crown might be to determine it. Mr Stanley Burnton QC said that he accorded great weight to this decision of Jenkins J, particularly since it had stood for some time and formed the basis of the practice of the court in relation to the freeholds of dissolved companies; and he acknowledged that Parliament may have had this decision in mind when enacting later Companies and Insolvency Acts. However, in the face of the authorities, the deputy judge did not think that Jenkins J's decision that freeholds survived the dissolution of the freehold owner could stand in relation to a freehold disclaimed under s. 178 of the Insolvency Act 1986. Likewise, I do not consider that the case can stand as authority for the proposition that a freehold estate survives escheat to the Commissioners following a disclaimer under s. 1013 of the Companies Act 2006.

28. The researches of Mr Oughton have discovered that ***Re Strathblaine Estates Ltd*** has recently been followed by the High Court of the Republic of Ireland in ***Re Clariant AG and Clariant Plastics & Coatings (Ireland) Ltd*** [2020] IEHC 211 on similar facts to the present case. An Irish company in liquidation had agreed to transfer land to its sole shareholder but, through inadvertence, no transfer of the land had been executed before

the company was dissolved. A vesting order was made in favour of the ultimate intended beneficiary. Again, there was an express finding that there was sufficient written evidence of the creation of a trust to satisfy the Irish equivalent of s. 53 of the Law of Property Act 1925: see [7].

29. Mr Oughton has also referred me to the recent decision of Master Clark in ***Lizzium Ltd v The Crown Estate Commissioners*** [2021] EWHC 941 (Ch). That was an application for a vesting order under s. 181 of the Law of Property Act 1925 in respect of land owned by Clairvale Ltd (the second claimant), a company incorporated in Gibraltar, which had vested in the Crown by way of escheat when it was dissolved. Clairvale had intended to transfer the land to the first claimant, Lizzium Ltd, but there was no evidence of any legally enforceable agreement. Subsequently Clairvale Ltd. was restored to the register in Gibraltar. Because the original legal landowner had been restored to the register, and was a party to the claim, there were two possible candidates for a vesting order (unlike the instant case, where the company remains dissolved and it is too late for it to be restored to the register). Master Clark made an order under s. 181 of the Law of Property Act 1925 vesting the land in the restored Clairvale; but she refused to make any order in favour of Lizzium because that company had no legal entitlement to the land and so would not *"have been entitled to the estate which determined had it remained a subsisting estate"* within s. 181.

30. At [52-57] Master Clark said this:

> 52. In this case, the claimants do not allege that at the date of Clairvale's dissolution, Lizzium had a subsisting legal entitlement to the Property, or even … an entitlement that was contingent upon the occurrence of certain further events.
>
> 53. The claimants' counsel submitted as follows. In this case, it was the intention in 1997 for the Property to be transferred to Lizzium along with Warren Towers. That, he said, did not happen only because of a mistake as to the title. Had Clairvale not been dissolved, and had the land not passed by escheat, the mistake would by now have been corrected by the simple step of transferring the Property to Lizzium. Lizzium is, therefore, he submitted, 'the person who would have been entitled to the estate which determined had it remained a subsisting estate'.
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> 54. The claimants' case is therefore based on the court making the counterfactual assumption that had Clairvale not been dissolved, it would have transferred the Property to Lizzium, and Lizzium would thereby have become entitled to it.
>
> 55. In my judgment, this extends the scope of the expression 'would have been entitled' in a way which is unsupported by the two decisions relied upon. In both those cases, the claimant had at the date of dissolution, clear legal rights under the option agreements, and in order to become entitled, it was only necessary that certain steps were taken under the agreements. In my judgment, the expression is to be construed as meaning entitled as a matter of a legal right subsisting at the date of the escheat, even if some further steps need to be taken to achieve an enforceable entitlement to the property.

> 56. In this case, it is not suggested that Lizzium had any legal rights (e.g. to rectify the Transfer) against Clairvale at the date of its dissolution. I do not consider that the fact that Clairvale might or even would have decided to transfer the Property to Lizzium at some point after 1998 (when it had no binding obligation to do so) is sufficient to make Lizzium a person who would have been entitled to the Property had it continued as a subsisting estate.
>
> 57. For these reasons, therefore, I will not make an order vesting the Property in Lizzium.

Mr Oughton invites the court to note that no claim in proprietary estoppel was advanced in that case.

31. As the decision of a Master, the case of ***Lizzium*** is strictly not binding upon me since I am sitting as a Judge of the High Court; but I see no reason to differ from the conclusion reached by Master Clark. I would, however, point out that the decision was expressly directed to the language of s. 181 of the Law of Property Act 1925 rather than the terms of s. 44 (ii) (c) of the Trustee Act 1925.

32. Mr Oughton acknowledges that before s. 44 (ii) (c) can be engaged, a trust must have existed at the time of the company's dissolution. As Roth J observed, in the ***UBS*** case (at [10]):

> … s. 44 is engaged only if the corporation being dissolved … was at the time of dissolution a trustee.

33. Where no trust exists at the time of dissolution, a vesting order can only be made under s. 181 of the Law of Property Act 1925, as happened in the ***UBS*** case. There the issue was what should happen when the grantee of an option to purchase freehold land in England owned by an overseas company found, when it sought to exercise the option, that the overseas company had been dissolved. Roth J was not satisfied that the option agreement meant that the dissolved company could be regarded as a trustee falling within the scope of s. 44 (ii) (c) of the Trustee Act 1925. However, he went on to hold that s. 181 of the Law of Property Act 1925 covered the situation. The freehold estate of the overseas company had ceased to exist when the land vested in the Crown by escheat on the company's dissolution; and this therefore engaged the jurisdiction of the court to create a corresponding estate by making a vesting order under s. 181.

34. A vesting order under s. 181 was also made by Mr Jeremy Cousins QC (sitting as a Judge of the Chancery Division) in ***Quadracolour Ltd v Crown Estate Commissioners*** [2013] EWHC 4842 (Ch) where the facts were similar to those in the ***UBS*** case, save that the owner of the land was a company registered within this jurisdiction rather than an overseas company. On the company's dissolution, the land had vested in the Crown as bona vacantia (under the statutory predecessor of s. 1012 of the Companies Act 2006). Some 7 ½ years later, the Crown gave notice of disclaimer under s. 1013 of the 2006 Act, thereby causing the land to escheat to the Commissioners. At [34] Mr Cousins QC recognised that the position was not quite as straightforward as it had been in the ***UBS*** case because the owner of the land was not an overseas company and, therefore, no escheat arose when it was dissolved. However, subsequently there was an escheat (on the disclaimer) and, therefore, the position was, for all practical purposes,

entirely comparable to the position in the *UBS* case. Mr Cousins QC agreed with Roth J's conclusion in that case that there was no basis for holding that the land was held subject to any trust; but since it was perfectly clear that the legal estate which had previously vested in the dissolved company had determined, the jurisdiction under s. 181 was engaged. Although the deputy judge did not directly address the lapse of some 7 ½ years between the dissolution and the disclaimer (which gave rise to the escheat, and thus the determination of the legal estate), he clearly saw this as no obstacle to the potential application of s. 181. In my judgment, he was right to do so because, without recourse to s. 181, there would have been no jurisdiction to make any vesting order in respect of the land.

35. From this review of the authorities, I derive the following propositions:

(1) The jurisdiction to make a vesting order under s. 181 of the Law of Property Act 1925 is available where *"by reason of the dissolution of a corporation … a legal estate in any property has determined".* It may be invoked not only where a foreign company owning land in England or Wales is dissolved, giving rise to an immediate escheat to the Crown (as in the *UBS* and *Lizzium* cases); but also where (as in *Quadracolour*) the Crown disclaims property which had previously vested in it as bona vacantia following the dissolution of a company registered in England or Wales, even though the determination of the legal estate is the result of the later disclaimer, rather than the earlier dissolution of the company.

(2) On an application for a vesting order under s. 181, the applicant must establish some legal right to the property in question which subsisted at the date of the company's dissolution, even if some further steps need to be taken to achieve an enforceable entitlement to the property.

(3) Where at the time it was dissolved, a company held property in trust for another person, any application for a vesting order should be made under s. 44 (ii) (c) of the Trustee Act 1925, rather than s. 181 of the Law of Property Act 1925. Such an application presupposes the existence of a trust at the time of dissolution.

36. In the present case, the legal entitlement upon which Mr Oughton relies in support of the claimants' application for vesting orders in their favour is a claim by way of proprietary estoppel. I therefore turn to the law governing such claims.

Proprietary estoppel

37. Mr Oughton relies upon the statement of the three elements required to establish an equity arising by proprietary estoppel at paragraphs 15-007 and following of *Megarry & Wade: The Law of Real Property* (9th edn): (1) encouragement or acquiescence, (2) detrimental reliance, and (3) unconscionability. In a case of active encouragement (such as the present), Mr Oughton submits that it is no bar to the equity arising that both the landowner (in this case, the company) and the claimants acted under a mistaken assumption as to their respective rights. He points to the following observations of Clauson LJ in *Re Eaves* [1940] Ch 109 at 117-118:

> It is well settled that if a party has so acted that the fair inference to be drawn from his conduct is that he consents to a transaction to which he might quite properly have objected, he cannot be heard to question the

> legality of the transaction as against persons who, on the faith of his conduct, have acted on the view that the transaction was legal … The principle applies even if the party whose conduct is in question was himself acting without full knowledge or in error … In the circumstances of the present case the defendant was left by the plaintiff to act, and did in fact act, on the view that the winding up of the trust was a completely legal transaction, leaving the fund in his hands as his own for him to spend, and it appears to me to be contrary to all principle that the plaintiff should now be heard to question the legality of the transaction.

Mr Oughton also points out that an interest by way of proprietary estoppel may arise despite the absence of any written evidence to satisfy the requirements of s. 53 of the Law of Property Act 1925; and that such an interest will bind successors in title who, like the Crown and the Commissioners, are not purchasers for value.

38. Mr Oughton relies upon the following matters to establish the proprietary estoppel:

(1) The company (and in particular Mr Allen, its accountant) represented to the claimants that there had been an effective winding-up of the company, and that the two properties had been validly distributed to them;

(2) The claimants acted to their detriment in reliance upon this belief in the following respects: (a) the claimants allowed the values of the two properties to be taken into account when calculating their respective entitlements from the company's assets, with the second claimant allowing the first claimant to receive more by way of cash from the company that he was strictly entitled to in the mistaken belief that the former was acquiring a more valuable property; (b) the first claimant paid CGT on the basis that he had received Rodham Terrace as a distribution upon the winding-up of the company, and he used up a significant part of his entrepreneur's allowance in reducing the amount of CGT otherwise payable; (c) the first claimant joined with his daughter in applying to have the company struck off the register, and neither claimant objected to the striking-off and dissolution of the company, acting on the mistaken basis that it had no assets; and (d) the claimants did not apply for the restoration of the company to the register in the six years allowed by s. 1030 (4) of the Companies Act 2006 since they continued to believe that it had no assets.

(3) In all the circumstances, it would be unconscionable for the company, and for the Commissioners, as its successors in title, to deny the claimants' ownership of the two properties.

39. Mr Oughton recognised that the detriments identified at sub-paragraphs (c) and (d) above are more substantial than those at (a) and (b), where there might have been countervailing benefits. Mr Oughton also acknowledges that (d) arose after the dissolution of the company; but he submits that post-dissolution detriment which adds to pre-existing detriment can assist in establishing a proprietary estoppel.

40. Mr Oughton points out that in the present case there can be no uncertainty about the proper approach to the remedy to be awarded to the claimants, once the court finds that a proprietary estoppel has been established, because enforcing the expectation created by the company and compensating for the detriment suffered by the claimants both lead to the same result: the court should satisfy the resulting equity by declaring that the

claimants are the true owners of their respective properties, and by vesting legal title in them accordingly.

41. Mr Oughton also submits that once a proprietary estoppel has been established, the Commissioners are to be treated as holding the legal estate in the two properties upon trust for the claimants. Proprietary estoppel is an equitable remedy; and the only way of giving effect to the claimants' equitable entitlement is by holding that the Commissioners hold the legal estate in the respective properties for the claimants beneficially.

42. Finally, Mr Oughton submits that there can be no bar to the grant of relief by way of proprietary estoppel. The company was solvent and had sufficient distributable reserves to enable a distribution in specie of its assets to be made to the claimants, who were its only two shareholders, and had both agreed to that course. Mr Oughton acknowledges that there was never any valid winding-up of the company; but the claimants had proceeded in the honest belief that they had been acting entirely properly, accounting to HM Revenue and Customs for any CGT properly payable, and they had been let down by their professional accountant, Mr Allen. Mr Oughton recognises that if the transaction were to be retrospectively re-analysed as the payment of a dividend by the company to the claimant shareholders, then there would have been a liability to income tax in the hands of the recipients, which would have been chargeable to the second claimant, despite his non-resident tax status, as well as the first claimant, and at a higher rate than the CGT accounted for by the first claimant. However, neither claimant had any knowledge of any facts that might have rendered them liable for such income tax. Mr Oughton has emphasised that the claimants are willing to undertake to the court to report any possible unpaid liability for income tax to HM Revenue and Customs, but subject to their right to rely upon any available limitation period applicable on the basis of carelessness, as opposed to deliberate wrongdoing (on the basis that the claimants only discovered that there had been no valid winding-up of the company as recently December 2021).

43. I accept Mr Oughton's submissions. I find that the claimants have established all the necessary elements to give rise to a valid claim to the two properties by way of proprietary estoppel. I also hold that this gives rise to a sufficient interest by way of trust, existing at the date of the company's dissolution in June 2010, to engage the court's jurisdiction under s. 44 (ii) (c) of the Trustee Act 1925 to make a vesting order in respect of each property in favour of the relevant claimant. If I am wrong about that, then I would hold, in the alternative, that the court's jurisdiction under s. 181 of the Law of Property Act 1925 is engaged.

44. The recent decision of the Supreme Court in *Guest v Guest* [2022] UKSC 27, [2022] 3 WLR 911 is concerned with the proper approach to the identification of the appropriate remedy to satisfy the resulting equity once a proprietary estoppel has been established. However, the majority judgment of Lord Briggs JSC (with whom Lady Rose JSC and Lady Arden agreed) contains much useful learning on the subject of proprietary estoppel. At [4] and [5] Lord Briggs explained that *"... one of the principal functions of equity is to put right injustice to which the law is otherwise blind, by restraining the rigid application of legal rules where their implementation would be unconscionable".* One such legal rule is that

> … a promise is not enforceable unless it is made part of a contract … But equity may in such circumstances provide the promisee … with a remedy if a promise has been made to confer property upon him in the future, (or an informal assurance that the property is already his) in reliance upon which he has acted to his detriment. The remedy is called proprietary estoppel. The word 'proprietary' reflects the fact that the remedy is all about promises to confer interests in property, usually land. The perhaps quaint word 'estoppel' encapsulates the notion that the equitable wrong which has been threatened or done is the repudiation of the promise where it would be unconscionable for the promisor to do. So the equitable remedy is to restrain, or stop or 'estop' the promisor from reneging on the promise. The court may require the promise to be performed by the promisor … It may in limited circumstances affect successors in title of the promisor to the relevant property.
>
> Equitable remedies are generally more flexible than those afforded by the common law and they are always discretionary. The very notion of the specific enforcement (or performance) even of a contractual promise is equitable in origin. It exists to fill the lacuna in the common law remedy of damages, where the nature of the underlying property is such that damages would be an inadequate remedy. But there is no cause of action for damages for breach of a non-contractual promise. Equity is not in this context merely providing an ancillary remedy in support of a common law cause of action, for which damages is the primary remedy. Under the doctrine of proprietary estoppel the specific enforcement of the promise or assurance is the primary remedy for the unconscionability threatened or occasioned by its breach.

45. At [10] Lord Briggs emphasised that *"… detriment is relevant to both the arising of the equity and to the remedy. Without reliant detriment there is simply no equity at all. This reflects the notion that it is the reliant detriment which makes it unconscionable for the promisor to go back on his promise."* At [31] Lord Briggs cited with approval the acceptance by *"one of the greatest equity judges, Oliver J (later Lord Oliver of Aylmerton)"* of the following summary by counsel of the remedy of proprietary estoppel in <u>*Taylors Fashions Ltd v Liverpool Victoria Trustees Co Limited*</u> [1982] QB 133, at 144:

> if under an expectation created or encouraged by B that A shall have a certain interest in land, thereafter, on the faith of such expectation and with the knowledge of B and without objection by him, [A] acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation.

Later (at [34]) Lord Briggs cited from a later passage from Oliver J's judgment (at 151) where he explained that the question is

> … whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment.

46. At [74-76] Lord Briggs explained that

> … in principle, the court's normal approach should be as follows. The first stage (which is not in issue in this case) is to determine whether the promisor's repudiation of his promise is, in the light of the promisee's detrimental reliance upon it, unconscionable at all. It usually will be, but there may be circumstances … when it may not be. Or the promisor may have announced or carried out only a partial repudiation of the promise, which may or may not have been unconscionable, depending on the circumstances.
>
> The second (remedy) stage will normally start with the assumption (not presumption) that the simplest way to remedy the unconscionability constituted by the repudiation is to hold the promisor to the promise. The promisee cannot (and probably would not) complain, for example, that his detrimental reliance had cost him more than the value of the promise, were it to be fully performed. But the court may have to listen to many other reasons from the promisor (or his executors) why something less than full performance will negate the unconscionability and therefore satisfy the equity …
>
> If the promisor asserts and proves, the burden being on him for this purpose, that specific enforcement of the full promise, or monetary equivalent, would be out of all proportion to the cost of the detriment to the promisee, then the court may be constrained to limit the extent of the remedy. This does not mean that the court will be seeking precisely to compensate for the detriment as its primary task, but simply to put right a disproportionality which is so large as to stand in the way of a full specific enforcement doing justice between the parties.

At [94] Lord Briggs emphasised that

> … neither expectation fulfilment nor detriment compensation is the aim of the remedy. The aim remains what it has always been, namely the prevention or undoing of unconscionable conduct. In many cases, once the equity is established, then the fulfilment of the promise is likely to be the starting point, although considerations of practicality, justice between the parties and fairness to third parties may call for a reduced or different award. And justice between the parties may be affected if the proposed remedy is out of all proportion to the reliant detriment, if that can easily be identified without recourse to minute mathematical calculation, and proper regard is had to non-monetary harm.

47. In a separate judgment, Lord Leggatt JSC (with whom Lord Stephens JSC agreed) sought (at [254-255]):

> … to distil the points discussed above into a summary of the key principles and their practical application. In doing so I would emphasise that these are principles and not rules. We are concerned with a situation where: (1) A makes an informal promise to give B an interest in land or other property (typically, as here, on A's death); (2) the promise is not

> (and would not reasonably be understood to be) legally binding; (3) B nevertheless reasonably relies on the promise and, in doing so, acts in a way which will operate as a substantial detriment to B if the promise is not kept; and (4) A later resiles from or fails to keep the promise for reasons which are assumed to be neither party's fault (or no more the fault of one party than the other).
>
> In such cases the core principle underpinning the grant of relief is that equity will not allow A to go back on the promise made without ensuring that B does not suffer detriment as a result of B's reliance on it. The aim of the remedy is thus to prevent detriment to B in the circumstances which have arisen.

Earlier (at [155]) Lord Leggatt suggested that:

> To avoid confusion, it seems to me that … it would be better to shed the label 'estoppel' and adopt a name which reflects, at least broadly, the nature of the claim. Without pre-judging the controversy to which I am about to turn, I would suggest the description 'property expectation claim'.

48. Applying these legal principles to the present case, acting on behalf of the company, Mr Allen led the claimants, as its shareholders, to understand that there had been a valid winding-up of the company as part of which Rodham Terrace had been validly transferred to the first claimant and Little Corby Road to the second claimant, with their respective entitlements to the company's liquid cash assets being calculated by reference to the respective values of these two properties, and the first claimant accounting for his perceived resulting CGT liability on that basis. In reliance on the understanding that the company had distributed all of its liquid cash and property assets, the first claimant took the necessary steps to have the company struck-off the register and dissolved; and the second claimant abstained from taking any steps to prevent this. Thereafter, not realising that the company remained as the registered proprietor of the two properties, neither of the claimants took any steps to have the company restored to the register until it was too late to do so. I recognise that this last omission necessarily post-dates the dissolution of the company, and the first vesting of its property in the Crown. However, I acknowledge that this post-dissolution detriment may be of some slight, albeit not decisive, relevance to the claimants' proprietary estoppel claim because it both reinforces the pre-dissolution detriment suffered by the claimants, and it also assists in determining the appropriate remedy to be awarded to the claimants, since restoring the company to the register, thereby enabling it to dispose of the properties itself, has now ceased to be an available option.

49. I am satisfied that it would clearly be unconscionable for the company, and for the Commissioners, as their (involuntary) successors in title (for no consideration), to deny the claimants' ownership of the properties. Equally, the making of vesting orders in favour of the claimants in respect of each of the properties would be consistent with the interests of justice. First, the failure to transfer the properties out of the company before it was struck off and dissolved was a clear mistake which the making of vesting orders in favour of the claimants will effectively correct. Had the company continued to exist, the claimants would have been able to procure the transfer of the properties to themselves. That result can only now be achieved by the making of vesting orders in

favour of the claimants. Second, if the mistake is not corrected, then the Commissioners will receive a windfall; and they do not oppose the claim. Third, if no vesting orders are made, then it is unclear what will happen to the properties or their tenants. The Commissioners' solicitors' letter dated 22 July 2022 implicitly recognises the Commissioners' reluctance to undertake any acts of possession, entry or management so as to avoid any liability or responsibility arising in respect of the properties. Fourth, the making of vesting orders would be consistent with the situation which would be likely to have applied had it still been possible to restore the company to the register.

50. For these reasons, I uphold the Part 8 claim. I will make orders pursuant to s. 44 (ii) (c) of the Trustee Act 1925, or alternatively s. 181 of the Law of Property Act 1925, vesting the legal and beneficial interests in (1) Rodham Terrace in the first claimant, and (2) Little Corby Road in the second claimant. There will be no order as to costs.