



Neutral Citation Number: [2023] EWHC 1486 (Ch)

Claim No: PT-2021-000377

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
BUSINESS LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: Friday, 16 June 2023

Before:

ROBIN VOS
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

Between:

(1) MR SEAN PRESON
(2) MRS JANINA PRESON

Claimants

- and -

(1) MR IVAN PRESON
(2) MRS WENDY PRESON
(3) MR IVAN DEAN PRESON
(4) MRS SUZANNE JOAN COOKE
(the Third and Fourth Defendants sued in their capacity
as the trustees of the Preson Family Discretionary
Settlement dated 31 December 2019)

Defendants

**STUART BENZIE (instructed by Freeths LLP) appeared for the Claimants
NICHOLAS GEORGE (instructed by Philip J Hammond & Sons Solicitors) appeared
for the Defendants**

Hearing dates: 22-26 May 2023

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This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Friday, 16 June at 2 pm

DEPUTY JUDGE ROBIN VOS:**Introduction**

1. Springfield Farm in Leicestershire was purchased in 2003 by the First and Second Defendants, Ivan Preson and his wife, Wendy and by the Claimants who are their son, Sean Preson and Sean's wife, Janina. To avoid confusion, I will refer to family members by their first names but mean no disrespect in doing so.
2. The property consists of two separate houses, the Barn which is occupied by Sean and Janina and the Farmhouse which was, until relatively recently, occupied by Ivan and Wendy. There is also approximately 40 acres of land, part of which is used for a caravan storage business which was, until this dispute arose, carried on in partnership by Ivan, Wendy, Sean and Janina.
3. The dispute relates primarily to the ownership of Springfield Farm. Both couples contributed equally to the purchase. The Barn and approximately 14 acres of land (known as "the Three Fields") are registered in the names of Sean and Janina. The Farmhouse and approximately 26 acres of land (referred to as "the Disputed Land") were, until 2020, registered in the names of Ivan and Wendy. They say that this reflects what was agreed with Sean and Janina at the time of the purchase.
4. Sean and Janina accept that the houses were to be owned separately but claim that it was agreed that the land would be owned jointly by all four of them. Over the last few years, there has been interest in Springfield Farm from developers and so the difference between the current division of the land and an equal split could no doubt have significant financial implications for the parties.
5. In early 2020, Ivan and Wendy transferred the Disputed Land (but not the Farmhouse nor a small piece of land mentioned below which is known as the Triangle) to the Third and Fourth Defendants as trustees of a discretionary trust established on 31st December 2019 ("the Trust"). The trustees are two of Ivan and Wendy's other children, Dean Preson and Suzanne Cooke. The Trust is for the benefit of Sean, Dean, Suzanne and their respective descendants (other than one of Suzanne's children). The Defendants accept that, if Sean and Janina have a beneficial interest in the Disputed Land, the trustees will have taken the land subject to that interest.

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6. For completeness, Ivan and Wendy have a fourth child, Russell Preson. There is however no suggestion that he has any interest in Springfield Farm nor that he would benefit from the Trust.
7. In the Claimants' pleadings, the claim is put on the basis of a common intention constructive trust, a resulting trust, proprietary estoppel, unjust enrichment or, alternatively, on the basis that the land at Springfield Farm is partnership property.
8. In closing submissions, Mr Benzie (who appeared for the Claimants) did not pursue the resulting trust presumption (which is based on the equal contributions to the purchase price) but instead relied on this only as evidence of the alleged common intention.
9. Whilst the Claimants still rely on their claims based on proprietary estoppel, unjust enrichment and the status of the land as partnership property, it is fair to say that Mr Benzie did not pursue any of these arguments with any great vigour in his closing submissions. The reason for this is no doubt that the Claimants' main case is that there was an agreement as to the ownership of Springfield Farm which was reached at the time of the purchase and that this forms the basis of a common intention constructive trust.
10. The Defendants' position is also that an agreement was reached as to the ownership of Springfield Farm at the time of the purchase. Where they differ is as to the terms of that agreement. In the light of this, Mr George (appearing on behalf of the Defendants) submits that the only task which the court needs to undertake is to determine what was agreed when Springfield Farm was purchased in 2003.
11. I agree that this is the main issue to be resolved. However, a finding on this point in favour of the Defendants does not preclude a successful claim based on unjust enrichment, proprietary estoppel or the status of the land as partnership property, although it is no doubt a significant factor which will need to be taken into account in determining whether any of those other claims are made out.
12. It is implicit in the way the Claimants' put their claim that the Three Fields are held by them in equal shares for themselves, Ivan and Wendy. Should their defence fail, Ivan and Wendy make a counterclaim to this effect. This is not disputed by the Claimants.

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13. In addition to the main claim relating to the ownership of Springfield Farm, there are various claims and counterclaims relating to the caravan storage partnership and alleged trespass by Sean and Janina on land said to be owned by Ivan and Wendy (including the Farmhouse). The parties have however reached agreement in relation to these matters. To the extent necessary, the parties will agree the form of any order which they wish the court to make in respect of these matters. I therefore say no more about them.

Background facts

14. It is convenient at this stage to set out the background to the purchase of Springfield Farm and the events which took place subsequently in a little more detail, at least to the extent that these are facts in respect of which there is no real dispute.
15. Sean used to run a significant business installing double glazing. Ivan has done well in the building and property business.
16. Prior to the purchase of Springfield Farm, Sean and Janina lived next door to Ivan and Wendy. They got on well together and trusted each other.
17. In Spring 2002, Sean and Janina were looking to purchase a property. They had put in an offer which had been accepted. However, Ivan was diagnosed with a potentially life threatening condition and had to spend several weeks in hospital. Fortunately, the diagnosis was wrong.
18. After Ivan was discharged from hospital, he and Wendy decided they would like to purchase a farm. Sean and Janina pulled out of the purchase of the property which they were proposing to purchase, with the intention of joining in any purchase by Sean's parents so that they could continue to live close to them and be able to look after them should they have health problems in the future.
19. Springfield Farm (then known as Forest Road Farm) was identified by Ivan as a potentially suitable property in November 2002. Ivan put in an offer for the full asking price of £525,000 in late November 2002.
20. At that time, Springfield Farm comprised a farmhouse (described by Ivan in his witness statement as dilapidated), a barn which could potentially be developed into a

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separate house and approximately 40 acres of land (being the Disputed Land and the Three Fields). The sellers had been carrying on a caravan storage business on part of the land. Ivan and Wendy did not consider the farmhouse suitable for their needs and intended to demolish it and to build a new house.

21. Both Sean and Suzanne expressed an interest in participating in the purchase of Springfield Farm. Sean and Janina in particular were keen to convert the barn into a house. In the end, Suzanne decided not to be involved.
22. Although the total purchase price was £525,000, it was agreed that Wendy and Ivan would contribute £300,000 to the purchase and that Sean and Janina would also contribute £300,000. The total costs including stamp duty land tax and expenses was approximately £543,000. The balance of around £57,000 was earmarked for works which would be needed to the property such as upgrading the driveway, installing gates, the construction of walls and improving the sewage and drainage facilities.
23. I will not at this stage say anything about what was agreed in relation to the ownership of Springfield Farm which is the main focus of the dispute and which I will address in considering the existence of a common intention constructive trust.
24. It is however common ground that one other aspect of the agreement was that the caravan storage business would be carried on as a partnership by Ivan, Wendy, Sean and Janina. For this purpose, a partnership bank account was opened with HSBC. Sean's evidence was that he transferred his and Janina's contribution of £300,000 to this bank account on 2nd January 2003. However, it is clear from a letter provided by HSBC that the earliest that the account could have been opened was 22nd January 2003. Sean is therefore mistaken about the date of any transfer.
25. As there is no dispute that Sean and Janina did contribute £300,000, this mistake has limited relevance although I will briefly come back to the point in relation to Sean's credibility as a witness and the question as to whether the Disputed Land is partnership property.
26. Ivan instructed the longstanding family solicitor, Mr James Hawkins of Salusburys to deal with the purchase. The seller's solicitor provided Mr Hawkins with three

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contracts relating to the purchase as the land which comprised Springfield Farm was held by three different (but connected) sellers.

27. The first contract related to the Three Fields, the second contract dealt with a small piece of land near the entrance to the farm known as the Triangle (which is part of the Disputed Land) and the third contract covered everything else including the Barn, the Farmhouse and remainder of the Disputed Land. The plans attached to the contracts each clearly showed the relevant part of Springfield Farm dealt with by the contract in question.
28. At the request of the sellers, the purchase price of £525,000 was allocated as to £29,000 for the Three Fields, £1,000 for the Triangle and £495,000 for the remainder of the farm.
29. Each of the three contracts originally named Ivan as the purchaser. However, this was amended in manuscript so that Sean and Janina were named as the purchasers in the contract for the Three Fields whilst Ivan and Wendy were shown as the purchasers in the other two contracts. Notwithstanding this, all three contracts were signed by each of Ivan, Wendy, Sean and Janina. Exchange of contracts took place on 29 January 2003.
30. Completion took place on 28 February 2003. As far as the identity of the transferees is concerned, these are consistent with the contracts so that the Three Fields were transferred to Sean and Janina whilst the Triangle and all the remaining land (including the Barn and the Farmhouse) were transferred to Ivan and Wendy. Each of the transfers confirmed that the transferees were to hold the property on trust for themselves as joint tenants. The Defendants accept that this express declaration of trust does not prevent the existence of a common intention constructive trust.
31. Unlike the contracts, the transfers were signed only by the named transferees (Sean and Janina in respect of the Three Fields and Ivan and Wendy in respect of the other two transfers).
32. Following completion, Sean and Janina converted the Barn which has, since then, been their home. Ivan and Wendy demolished and rebuilt the Farmhouse. They lived

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there for many years but have since moved to Spain. The house is now occupied by Dean.

33. In February 2006, Ivan and Wendy executed wills which, on the death of the survivor, gave Sean the Barn and 50 per cent of the remainder of Springfield Farm. The other 50 per cent was to be divided between Ivan and Wendy's four children and their grandchildren subject to an option for Sean to purchase Springfield Farm at market value.
34. Sean and Janina wanted to build stables and an associated menage on land adjoining the Barn (which was part of the land registered in Ivan and Wendy's names). There is a dispute as to the extent to which Ivan and Wendy were aware of, and agreed to, Sean and Janina's plans and I will come onto this. In any event, Sean and Janina applied for planning permission in January 2007. The application was received by the local authority on 7th February 2007 and was approved on 11th June 2007. The stables were completed first and the menage a little later as there had been a disagreement with the planners about proposed lighting for the menage.
35. Following completion of the stables and the menage, Ivan made it clear to Sean and Janina not only that the stables and the menage were on land which was in the sole ownership of himself and Wendy but also that the Barn was part of the land which was registered in their names. Sean and Janina say that this is when they first became aware that they were not even the registered owners of their own home.
36. Ivan accepted that a mistake had been made and, in March 2008, he instructed Mr Hawkins to transfer the Barn into the names of Sean and Janina. However, on the same day as Mr Hawkins sent the transfer deed to Ivan, he changed his instructions, requesting that the remainder of Springfield Farm (other than the Barn and the Farmhouse but including the Three Fields) should be transferred into the joint names of himself, Wendy, Sean and Janina. Mr Hawkins sent Ivan the relevant transfers giving effect to this on 17 April 2008.
37. None of the transfers were however completed at this time. Instead, in September 2009, the Barn was transferred into Sean and Janina's names together with a right of way over the driveway leading to the Barn. At the same time, Ivan and Wendy granted Sean and Janina a right of way over the land which was registered in the

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names of Ivan and Wendy to enable Sean and Janina to have access to the Three Fields.

38. Ivan and Wendy changed their wills in 2011. The gifts of the Barn and half of the balance of Springfield Farm to Sean were removed. Instead, he was given an option to purchase Springfield Farm at a 20 per cent discount to market value. Subject to this, their estates were to be split between Ivan and Wendy's children and their spouses with Sean and Janina receiving one quarter.
39. Relations between Sean and his father were difficult in 2012 as a result of loans due from Sean to his parents. In the light of this, Wendy suggested in April 2012 that the farm should be sold and the proceeds "split down the middle". This did not however happen.
40. In October 2014, Ivan and Wendy changed their wills once again. Sean was still given an option to purchase Springfield Farm at market value but with no discount. Their estates were now to be divided equally between Sean, Dean and Suzanne.
41. Between 2015-2018, Ivan continued to pursue a possible sale of Springfield Farm. He wrote to Sean proposing that he and Wendy might sell that part of Springfield Farm which was held in their names (the Farmhouse and the Disputed Land) but the documents show that any serious marketing of the property related to the whole farm.
42. Sales particulars for the entire farm were put together in 2018 with an asking price of £3.5m. No purchasers were found but an offer was received from Taylor Wimpey to take an option primarily over the land held in the names of Ivan and Wendy. Ivan tried to discuss this with Sean in January 2019 but received no response. Sean did however discuss the ownership of the farm with Dean in late January or early February 2019.
43. There is some disagreement between Sean and Dean as to what was actually said. However, Dean subsequently spoke to his father and on 4th February 2019, Ivan wrote to Sean, Suzanne and Dean noting that there was a problem with the way in which Springfield Farm was originally purchased and that, as Sean and Janina had contributed the same as he and Wendy, Sean could lose out if it was not "put right".

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His proposed solution was that all of the farm should be put into a trust and that Sean should benefit from 50 per cent of this as well as a third of the remaining 50 per cent.

44. The family obtained tax advice from a firm called Obsidian. Meetings were held with Obsidian in March and April 2019. The possibility of Sean and Janina contributing the Three Fields to the Trust was discussed at those meetings but Sean declined to do so. His explanation for this is that his father was insisting that the trustees (proposed to be Sean, Suzanne and Dean) should take decisions by majority and that he did not want the land which belonged to himself and Janina to be subject to the control of his siblings.
45. Obsidian produced a report in May 2019 recommending that the land held in the names of Ivan and Wendy (other than the Farmhouse) should be transferred to a discretionary trust for the benefit of Sean, Suzanne and Dean (and their descendants). The reason for recommending the use of a discretionary trust was that this would enable the gift to be made without any immediate liability to capital gains tax.
46. A trust document was signed by all parties in August 2019. However, Ivan and Wendy never transferred their land to the trustees of this trust as, when presented by Suzanne with a plan (signed by all the other parties) in December 2019, Sean disagreed with one of the boundaries, drew a line on the plan showing what he considered to be the correct boundary and refused to sign it.
47. Frustrated by this (and unknown to Sean and Janina), Ivan gave instructions for a new trust to be prepared with just Suzanne and Dean as the trustees. Sean (and his descendants) remained beneficiaries. The trust was completed on 31st December 2019. The Disputed Land (other than the Triangle) was transferred by Ivan and Wendy to Suzanne and Dean as trustees of the new trust in early 2020.
48. In the meantime, discussions had continued with Taylor Wimpey. In September 2019, Ivan shared with Sean a draft of an email to the solicitors acting for the family in relation to the proposed option agreement. The draft noted that all of the land at Springfield Farm should be included in any agreement. As regards the split of any proceeds, Sean and Janina would get the proceeds of any sale of the land held in their names. The proceeds of sale of any other part of the land (which Ivan wrongly believed had been transferred to the trustees of the trust which was signed in August

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2019) would be split equally between Sean, Dean and Suzanne. Sean approved the draft.

49. It appears that it was the discovery by Sean and Janina later in 2020 that the Disputed Land had been transferred to the trustees of the 31st December 2019 Trust which prompted them to bring this claim.

The witnesses and the evidence

50. Somewhat unusually for what is essentially a family dispute, there is a significant amount of documentary evidence available.
51. As a general point, I would note that it was (unsurprisingly) clear that none of the witnesses who were involved in the discussions in 2002/2003 (Sean, Janina and Ivan) had a clear recollection of events. There were inconsistencies in all of their evidence which are clear from a review of the contemporaneous documents.
52. Much has been written about the fallibility of human memory and I do not need to refer to the relevant authorities which are well known. Suffice it to say that, given the inconsistencies in the evidence and the fact that many of the events which are relevant to the determination of this matter took place 15-20 years ago, Mr Benzie is clearly right to suggest that the evidence of the witnesses must be treated with some caution and should be tested carefully against the documentary evidence.
53. That is not to say that the evidence of the witnesses should be discounted entirely. Indeed, it is an important part of the evidence which needs to be weighed in the balance. However, where documents are available, they will often provide a more reliable indicator of what took place or what people's intentions were than the imperfect recollections of those individuals.
54. The Claimants provided witness statements from six witnesses. The Defendants indicated that they did not need to cross-examine two of those witnesses, Anthony Cooper and David Isherwood. They had little of relevance to say and their evidence was not referred to by either party.
55. The remaining witnesses for the Claimants were the Claimants themselves and two friends, Dean Johnson and Timothy Pole. Mr George accepted that Mr Pole and Mr

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Johnson were straightforward witnesses. He had no criticism of their evidence although noted that what they knew about the ownership of Springfield Farm simply reflects what they had been told by Sean.

56. Janina's evidence relies very heavily on her recollection of being shown a plan of the entire farm (rather than the individual constituent parts) at the time the contract and transfers were signed in 2003. She noted that this plan was very familiar to her as she had seen it many times over the years and, indeed, she and Sean had several copies of the plan in their possession.
57. However, the plans attached to the contracts clearly show the particular part of Springfield Farm which was the subject of the relevant contract. There is no plan on which the whole of Springfield Farm is marked. As Mr George suggests, the most likely explanation is that there is an element of reconstruction in Janina's memory of what she saw in 2003 when the contracts were signed. This is not a criticism of Janina as anybody would be hard pushed to remember what they had seen 20 years ago.
58. What is a little more surprising is that Janina refused to accept in cross-examination that she may have been mistaken when taken to the relevant documents. This is another reason for exercising some care in considering Janina's evidence.
59. To a large extent, Sean's evidence in cross-examination was reasonably straightforward although, at times, appeared to be well rehearsed and designed to promote the Claimants' case in relation to the joint ownership of the Disputed Land. There was also a great deal which he could not remember which is of course to be expected given the passage of time.
60. There were some inconsistencies in Sean's evidence when viewed against the documentary evidence. One specific point highlighted by Mr George (which I have already referred to) is the opening of the partnership bank account and Sean's evidence in relation to the transfer of his and Janina's contribution of £300,000 to that account.
61. Sean's recollection that the funds were transferred on 2nd January 2002 is based in an entry on one of his own bank statements which shows a transfer of £300,000 on that

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date. However, it is clear that the recipient bank account is another account in Sean's name and not the partnership account. Sean had nonetheless inferred from this that the £300,000 must have been transferred onwards to the partnership bank account on the same date. Given the evidence from HSBC, this clearly cannot have been the case as the account was not opened until at least 22nd January 2002.

62. Mr George suggests that this mistake undermines Sean's credibility. I do not agree. There was a clear basis for Sean making the inference which he did. As it turns out, he was wrong but it is clear that this error was not deliberate. As with the evidence of other witnesses (including Ivan), it was just an inability to remember precisely what had happened 20 years ago.
63. There is however a more serious issue which the Defendants say should affect the weight which the court should place on Sean's evidence. This relates to a letter which Sean wrote to his parents in March 2012 and which I will refer to as the Disputed Letter.
64. The Claimants have disclosed an email from Sean to Janina attaching a copy of the letter which he tells Janina he had sent to his parents. However, the Claimants have also disclosed another copy of the same letter in which the words "We are still waiting for the farm to be put Right" appear at the end of the letter. Sean refers to this comment in his witness statement in support of the Claimants' case.
65. In the light of this, the Defendants instructed an expert, Christopher Watts, who describes himself as a "digital forensic expert" to provide an opinion as to when the additional words had been added to the document. Mr Watts has provided three reports. His conclusion is that the amendments were made on 20th February 2022 by somebody with access to Sean's computer. He notes however that access to Sean's computer would be needed to verify his conclusions.
66. Sean has provided a witness statement in which he denies adding the words in question on 20th February 2022. He cannot however explain how those words came to be contained in the letter although speculates that he might have originally included the words and then thought better of it (and therefore deleted them) in order to avoid falling out with his parents. He also notes that sometimes he makes a duplicate of documents when he is working on them.

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67. Sean explains that, on 20th February 2022 (the date Mr Watts suggests the Disputed Letter was amended), he had created a bundle of documents for a mediation in relation to this dispute which was to take place on 25th February 2022. That mediation bundle included a copy of the Disputed Letter in a JPEG format. Sean’s recollection is that he had printed the letter and scanned it for the mediation bundle folder.
68. The Claimants were given the opportunity to provide an expert report in relation to this issue but declined to do so. Mr Benzie explained that there had been insufficient time to obtain a detailed report (which would have involved removing Sean’s computer which he needed for his business) and that it was therefore decided to deal with the matter in cross-examination.
69. During Sean’s cross-examination, he was taken to the expert reports produced by Mr Watts. He emphatically denied having seen the reports prior to being shown them in the witness box. This is despite the fact that, in his witness statement, he used the words “I note that Mr Watts concludes in his supplemental expert report ...” and “following receipt of Mr Watts’ first report ...”. When pressed, he conceded that he was not sure if he had read or received the expert reports. However, this is clearly implausible given the importance of the issue which had been raised and the fact that the expert reports referred to in the witness statement were produced as recently as 17th and 28th April 2023.
70. Mr Benzie criticised Mr Watts for making findings of fact in his reports rather than sticking to providing his expert opinion. Whilst there is some truth in this, this element is relatively minor and does not in my view affect the weight which should be given to the report. For example, Mr Benzie noted that the letter had been posted to Sean’s parents. He explained that this was apparent from the covering email Sean had sent to Janina. In fact, that email only says that the letter was “sent” to Ivan and Wendy. Clearly however this is just a matter of semantics and is not material.
71. More importantly, Mr Watts conceded that, although the metadata on which he relies in his reports make it clear that the addition of the words in question was the last change which was made to the document, he cannot be sure that the amendment was made on 20th February 2022 despite this being the “last modified date”. The reason for this is that the markers which identify the last amendment are not themselves

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dated and the last modified date would have been changed if the document had been saved on 20th February 2022 whether or not it was amended on that date.

72. Mr Benzie submits that, based on all of this, the court cannot be sure that Sean amended the Disputed Letter on 20th February 2022. He notes that, given the seriousness of the allegation, cogent evidence is needed before such a finding can be made although he accepts that the test is still the balance of probabilities. The need for strong evidence is simply to overcome the inherent improbability of somebody amending a document in order to support their case. In this case, Mr Benzie suggests that such an action is even less likely in circumstances where an unamended version of the letter has also been disclosed which of course immediately makes it clear that an amendment has taken place.

73. Despite this however, my conclusion is that, on the balance of probabilities, the amendment was made by Sean on 20th February 2022. My reasons for this are as follows:-

73.1 Both the letter which was attached to Sean's email to Janina of 27th March 2012 and the version of the letter which contains the additional wording were created at the same time on the same date (24th March 2012). The evidence from Mr Watts was that if a document is copied and saved as a separate document, this would change the creation date (although rather strangely would not change the last modified date). This shows that the two versions of the letter are the same document.

73.2 The version of the letter which Sean sent to Janina on 27th March 2012 was last modified on 24th March 2012. It did not contain the additional words.

73.3 The addition of the words in question was the last change which was made to the document. The words cannot therefore have been added and then deleted before Sean produced the version which was sent to his parents as he speculated might have been the case. The words were added later.

73.4 Sean has no explanation as to why he might have added these words at some point between 24th March 2012 and 20th February 2022. He does not even suggest in his second witness statement that he might have done so. It is

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difficult to conceive of any reason why Sean would have added the relevant words to the letter after it had been sent to his parents but before this dispute arose. No such reason has been put forward by the Claimants.

73.5 Therefore, whilst it is possible that the document could have been amended at some point between 24th March 2012 and 20th February 2022, the likelihood of this is in my view extremely remote. A much more likely explanation is that Sean added the offending words on 20th February 2022 when preparing for the mediation in the hope that this would assist his case.

- 74.** I accept that it is surprising that Sean would have amended the Disputed Letter and disclosed the amended version at the same time as disclosing an unamended version of the same letter. However, disclosure only took place at the end of November 2022 and it is perfectly possible that he did not appreciate that the original letter would be disclosed.
- 75.** Similarly, it seems unlikely that Sean would have referred to the Disputed Letter which contained the additional words in his witness statement in March 2023 had he realised that a different version of the letter had also been disclosed. The more likely explanation is that Sean did not realise that it had been disclosed. The disclosure of the unamended version of the letter does not therefore in my mind outweigh the other evidence.
- 76.** I do also take into account the fact that, in the witness box, Sean refused to accept that he had seen the expert reports. His explanation for the references in his witness statement was that his solicitors had told him what the reports said. That may well be true, but it still does not explain his eventual concession that he could not remember whether he had received or read the reports. This inconsistency and the evasive response from Sean suggest to me that less weight can be given to the inherent improbability that Sean might deliberately amend the letter in order to support his case.
- 77.** Whilst my conclusion on this point has a significant influence on Sean's credibility and therefore the reliability of his evidence, it does not follow that it should be discounted in its entirety. It does however mean that where there is a conflict in the

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evidence given by the witnesses and there is no documentary evidence to shed light on the matter, it is likely that the evidence of the other witness should be preferred.

78. I turn now to the five individuals who provided witness statements on behalf of the Defendants. These were Ivan, Suzanne, Dean, Russell and Suzanne's son-in-law Stuart Smith. I should also note that the second defendant, Wendy Preson did not give evidence as she is not fit to do so. No adverse inferences are of course to be drawn from this.
79. Mr Smith lives in Australia and was unable to justify the expense of a trip to London in order to give evidence in person. The Defendants therefore gave a Civil Evidence Act notice in respect of his evidence which, to the extent relevant, related to suggestions that Sean had referred to the land registered in Ivan's and Wendy's names as his father's land.
80. Mr George accepted that Mr Smith's evidence should perhaps be given little weight given that he was not available to be cross-examined. I would agree with this. He did however note that Mr Smith's evidence was, to some extent, supported by the evidence given by Mr Johnson and Mr Pole although I have to say that any such support was relatively limited and was open to more than one interpretation.
81. In these circumstances, I can give Mr Smith's evidence little weight. In any event, even if I were to give it greater weight, it would not change my conclusion in the light of the other evidence.
82. Ivan was the main witness for the Defendants and the only one who was involved in the discussions relating to the purchase in 2002/2003. However, there was much that he could not recall and, on occasion, he became confused. For example, he denied being the main contact with the solicitors acting for the family in relation to the purchase whereas the documents clearly show that he was. He also denies any recollection of discussions about stamp duty land tax whilst the solicitor's notes show that he spoke to Ivan about this just before exchange of contracts.
83. Having said this, Ivan was for the most part straightforward in his answers to questions and readily conceded points which could be considered adverse to the Defendants' case when put to him. For example, it was clear that Ivan (and indeed

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Dean and Suzanne) had not really understood the impact of majority decision-making in relation to the 2019 Trust. When this was explained to him, he accepted that this might well be a reason why Sean would not have wanted to proceed with the proposal which Ivan had made in February 2019.

84. One notable area where Ivan was not particularly forthcoming was the reasons why, if there had not been an agreement that the Disputed Land and the Three Fields should be shared equally between Ivan, Wendy, Sean and Janina, there were a number of occasions on which Ivan and Wendy expressed an intention to give Sean (or Sean and Janina) 50 per cent of the Disputed Land rather than sharing it equally between his children, suggesting only that he might have had a “moment of weakness” or been “a bit naughty”.
85. Overall, I accept that Ivan was, for the most part, doing his best to answer the questions put to him but given the inconsistencies in his evidence I do again need to exercise some caution where the documents suggest something different.
86. Suzanne was a straightforward witness. To the extent that she was able to recall events, I have little hesitation in accepting her evidence.
87. Dean tended to give long narrative answers to the questions put to him which detracted from his evidence. However, having said this, subject to making an allowance (as with all of the witnesses) for the inability to accurately remember things after such a long time, I broadly accept his evidence as well.
88. The evidence Russell was able to give was limited as he had no real involvement in the matters in question after 2004. He was also not involved in the discussions relating to the purchase in 2002/2003. There is really therefore very little which he was usefully able to add. Russell agreed with the suggestion from Mr Benzie that he had just come to court to support the Defendants. When coupled with the passage of time, I can place very little weight on what he was able to say.
89. I should mention that there was also a joint expert report in relation to the value of Springfield Farm both when it was purchased in 2003 and as matters stood in January 2023. His conclusions in relation to the various constituent parts of Springfield Farm can be summarised as follows:-

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Area of land	January 2003	January 2023
The Farmhouse	£180,000	£740,000
The Barn	£57,000	£520,000
The Disputed Land	£252,000	£922,000
The Three Fields	£35,000	£136,000
The Triangle	£1,000	£3,000

90. I should note that neither Ivan nor Dean accepts the conclusions of the expert, both mentioning that the Defendants had commissioned a separate report which apparently came up with significantly different figures for the values in 2003. However, any such report is not part of the evidence before the court and so there is no reason for me to look behind the conclusions of the joint expert in relation to the actual values. There is however a separate question as to what the parties might have believed the different areas of land to have been worth in 2003 which I will come on to.
91. With that background in mind, I will turn now to consider the main issue which is what was agreed between Ivan, Wendy, Sean and Janina in 2002/2003 when Springfield Farm was purchased and, in the light of that, whether there is a common intention constructive trust in relation to the Disputed Land (and the Three Fields).

Common intention constructive trust**Legal principles**

92. There is no dispute between the parties as to the legal principles to be applied in determining whether a common intention constructive trust arises. There is also no dispute that these principles can apply in circumstances such as the present where, although between family members, the arrangement is almost commercial rather than the more common situation where the dispute is between spouses or partners living together in a family home.
93. The common intention constructive trust is an equitable remedy. The requirements for establishing such a trust were summarised by Sir Nicholas Browne-Wilkinson VC in *Grant v Edwards* [1986] Ch 638 at [654 D-E]:-

“If the legal estate in the joint home is vested in only one of the parties (“the legal owner”) the other party (“the claimant”), in order to establish a beneficial interest, has to establish a constructive trust by showing that it would be inequitable for the legal owner to claim sole beneficial ownership. This requires two matters to be demonstrated: (a) that there was a

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common intention that both should have a beneficial interest;
(b) that the claimant has acted to his or her detriment on the basis of that common intention.”

94. The approach to determining the parties’ intentions was considered by the Supreme Court in *Jones v Kernott* [2012] 1 AC 776. Although that case dealt with a situation where a property was held in the joint names of the parties, the Supreme Court also provided guidance on the principles to be applied where the property is held in the sole name of one of the parties. The key points can be summarised as follows:-
- 94.1 Where the claimant’s name is not on the register, the initial burden is to establish an intention that they should have a beneficial interest in the property (at [17] and [52]).
- 94.2 Once that is established, the second question is the extent of that interest, which is based on the common intention of the parties at the time the property was acquired (at [51] and [52]).
- 94.3 The parties’ intentions may either be expressed or inferred from their conduct (at [31]). The parties’ intentions must be deduced objectively from their words and actions (at [46] and [51(3)]).
- 94.4 The Court cannot impose a solution on the parties which is contrary to their intentions merely because the Court considers it fair to do so (at [46]).
95. The Judges in the Supreme Court do not expressly say whether, in making an objective determination of the parties’ intentions, it is appropriate to look at their conduct not only at the time the property was acquired but also their subsequent conduct. However, it seems to me that their subsequent conduct will inevitably shed light on what the parties’ intentions were at the time of acquisition and should therefore be taken into account.
96. This conclusion is supported by the fact that the Judges of the Supreme Court in *Jones v Kernott* focus very closely on the judgment of Baroness Hale in *Stack v Dowden* [2007] 2 AC 432 and in particular her comments in paragraphs [60-61]. At the end of paragraph [60], Baroness Hale concludes that:

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“The search is to ascertain the parties’ shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.”

97. As far as the requirement for detrimental reliance is concerned, this was recently confirmed by the Court of Appeal in *Hudson v Hathway* [2022] EWCA Civ 1648 at [128] and [153].
98. On behalf of the Defendants, Mr George did not suggest that if there were a common intention that the Disputed Land should be owned jointly, there was no detrimental reliance. The Claimants rely on the fact that the Disputed Land was transferred into the sole names of Ivan and Wendy and also that Sean and Janina contributed half of the purchase price.
99. The Court of Appeal accepted in *O’Neill v Holland* [2020] EWCA Civ 1583 at [69] that the transfer of the property into the sole name of the defendant was sufficient detrimental reliance by the claimant in that case.
100. In *Oxley v Hiscock* [2004] EWCA Civ 546, the Court of Appeal concluded at [68] that where a common intention that the claimant should have a beneficial interest was established:-

“The party who does not become the legal owner will be held to have acted to his or her own detriment in making a financial contribution to the purchase in reliance on the common intention.”

101. As it is not disputed that Sean and Janina contributed half of the purchase price and that the Disputed Land was transferred into the sole names of Ivan and Wendy, there can be no doubt that, if it is shown that there was a common intention that the Disputed Land should be owned beneficially in equal shares, they relied on that intention to their detriment.
102. The only question for the Court to determine therefore is whether the parties had such a common intention at the time Springfield Farm was acquired.
103. I should perhaps mention that the authorities show that it is perfectly possible for the parties to change their intention at some point after the initial purchase and, assuming there is the necessary detrimental reliance on the revised intention, for the beneficial

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interests in the property to change. However, in this case, neither party has pleaded that there was any such change. The determination of the claim therefore depends on what the parties' intentions were at the time of acquisition and it is to that issue which I now turn.

The intention of the parties

104. As I have said, the position of both parties is that an agreement was reached as to the ownership of Springfield Farm when it was purchased in 2003. The task of the Court is to determine what that agreement was. As Lord Walker and Baroness Hale noted in *Jones v Kernott* [at 36]:

“There will continue to be many difficult cases in which the Court has to reach a conclusion on sparse and conflicting evidence. It is the Court’s duty to reach a decision on even the most difficult case...that is what Courts are for”.

105. This is one of those difficult cases. Not only is there directly conflicting evidence from the parties as to what was agreed, there are elements of the subsequent actions and conduct of the parties which support each of their positions.

106. However, taking into account all of the relevant evidence, I have concluded that the Claimants' understanding of the agreement which was reached reflects the true intention of the parties, being that the Farmhouse should be owned by Ivan and Wendy, the Barn by Sean and Janina and that the remainder of the property (the Three Fields and the Disputed Land, including the Triangle) would be owned in equal shares by Ivan, Wendy, Sean and Janina. I explain my reasons for this in the following sections.

The initial purchase

107. Both the Claimants and the Defendants highlight specific aspects of the initial purchase in support of their case.

108. For the Claimants, Mr Benzie notes that all of the contracts were signed by all four individuals (Ivan, Wendy, Sean and Janina) and, based on the extracts from Mr Hawkins' file submits that the only reason that the Three Fields were transferred to Sean and Janina whilst the remainder of Springfield Farm was transferred to Ivan and Wendy relates to stamp duty land tax.

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- 109.** The Defendants, on the other hand, say that the fact that the Three Fields were transferred to Sean and Janina and everything else was transferred to Ivan and Wendy shows that the agreement which was reached was that Sean and Janina should have the Three Fields whilst Ivan and Wendy would get the Disputed Land. There is, as I have said, no dispute that it was always intended and agreed that Ivan and Wendy would own the Farmhouse and Sean and Janina would own the Barn.
- 110.** In order to consider these submissions, it is necessary to look in some detail at the evidence from Mr Hawkins' file in order to see what inferences can be drawn from what those documents reveal.
- 111.** The initial confirmation from the estate agent that a sale had been agreed was sent to Mr Hawkins on 29 November 2002. This showed the purchaser as Ivan. This was followed shortly afterwards on 9 December 2002 by draft contracts sent to Mr Hawkins by the sellers' solicitors, one for the sale of the Three Fields and one for the sale of everything else (other than the Triangle, where the agreement to purchase this small piece of land was reached later on).
- 112.** As I have mentioned, the reason for having separate contracts was that these pieces of land were in the separate ownership of different (but connected) sellers. The version of the contracts which were ultimately signed have numerous manuscript amendments, including the identity of the purchasers. However, the typing on these contracts shows Ivan as the sole purchaser.
- 113.** It is in my view right to infer that the contracts which were signed were the draft contracts which were originally sent to Mr Hawkins (at a time when it was clearly thought by the sellers that Ivan would be the sole purchaser) and that these contracts were just amended by hand to reflect any subsequently agreed amendments.
- 114.** The agreement to purchase the Triangle was reached at the end of December 2002. The sellers' solicitors sent Mr Hawkins a draft contract for this piece of land on 2 January 2003. Again, there was a separate contract as this piece of land was held in different ownership to the land which was the subject of the other two contracts. As with the earlier contracts, the typed version shows Ivan as the sole purchaser.

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- 115.** On 9 January 2003, Mr Hawkins had a telephone conversation and a meeting with Ivan's tax advisor, Tim Freeman. Mr Hawkins' notes of these discussions record that, at this stage, Ivan wanted the property to be transferred into the names of himself, Sean and Sue although it was noted that, for capital gains tax purposes (presumably the availability of main residence relief), Ivan should have the Farmhouse and an area of land.
- 116.** Mr Hawkins however pointed out to Mr Freeman that there were three pieces of land with three different sellers and that it would be difficult, if not impossible, to divide the land up at completion even if the sellers were agreeable (which he considered to be by no means certain).
- 117.** It was therefore proposed that the transfers should be structured as best as could be done to reduce stamp duty. The transfers would be registered at the Land Registry and there would then be deeds of gift as required. Mr Hawkins told Mr Freeman that he would be discussing this with Ivan in the coming days.
- 118.** It appears that it was at this meeting that Ivan instructed Mr Hawkins that the property should be transferred into the names of all four of Ivan, Wendy, Sean and Janina as the next page from Mr Hawkins' file (although undated) comprises further handwritten notes recording various points relating to the purchase including that he should speak to Mr Freeman about capital gains tax if the property is "all in four names".
- 119.** This is confirmed by a subsequent letter to Mr Freeman on 17 January 2003 in which Mr Hawkins states that, subject to Mr Freeman's advice "it is proposed to transfer all three plots of land to the four of them that being Ivan and Wendy Preson and Sean Preson and his wife". In line with Mr Hawkins' previous discussions with Mr Freeman, he goes on to say that "once the registration in their four names has been concluded it is then proposed to apportion the relevant parts to the appropriate couple of deed of gift."
- 120.** Mr Hawkins spoke to Mr Freeman on 23 January 2003 who confirmed that what Mr Hawkins was suggesting in his letter of 17 January 2003 was fine. Ivan called Mr Hawkins later the same day and, although it is not completely clear from what Mr Hawkins has written, I infer that he confirmed Mr Freeman's advice to Ivan during that conversation.

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- 121.** By 27 January 2003, it appears that, from Mr Hawkins' perspective, everything was ready for exchange of contracts. The notes made by Mr Hawkins show that, on that day, he had three telephone conversations with Ivan. The first conversation was a call from Ivan to Mr Hawkins with instructions to go ahead and exchange.
- 122.** Mr Hawkins then rang Ivan back to say that he had given further consideration to the stamp duty land tax position. He was concerned that the three contracts might be considered to be a series of transactions and proposed that, to make sure of the position, the "smaller amount" (this clearly being a reference to the Three Fields) should be transferred to Sean and Janina. Ivan agreed to this. The third conversation was simply a call from Mr Hawkins to Ivan to tell him that everything had been agreed with the sellers' solicitors.
- 123.** It is important to understand the position in relation of stamp duty land tax. The total purchase price for the three pieces of land was £525,000. Where the consideration for a purchase was more than £500,000, the rate of SDLT at the time was 4%. However, if the consideration was no more than £500,000 the rate was 3%. As I have mentioned, the proposed split of consideration by the sellers was £29,000 for the Three Fields, £1,000 for the Triangle and £495,000 for the remainder of Springfield Farm.
- 124.** It is clear from this that Mr Hawkins' concern was that if all three pieces of land were transferred to all four of Ivan, Wendy, Sean and Janina, the transactions would be linked and that, as the total consideration was more than £500,000, the rate of SDLT would be 4%. The effect of transferring the Three Fields to Sean and Janina and the other two parcels of land to Wendy and Ivan was that there would then be no link between the purchase of the Three Fields and the purchase of the remaining land and that as the consideration of the purchase of the farm other than the Three Fields was £496,000, the 3% rate of SDLT would apply.
- 125.** Mr Hawkins wrote to Ivan on 29 January 2003 to confirm that exchange of contracts had taken place on that day, with Sean and Janina being the purchasers of the Three Fields and Ivan and Wendy being the purchasers of the remaining land.

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- 126.** The question of course is how this documentary evidence should be interpreted and whether the evidence from the relevant witnesses (Ivan, Sean and Janina) sheds any light on this.
- 127.** Ivan initially suggested that the agreement which he says was reached with Sean and Janina that they would take the Three Fields and that he and Wendy would own the remaining land (other than the Barn) was reached in December 2002. However, it is clear from Mr Hawkins' notes that, even as late as 23 January 2003, Ivan's instructions were that the whole farm should be transferred into the joint names of all four purchasers.
- 128.** In cross examination, Ivan suggested that the initial agreement had been that the land would be held jointly but that this had then subsequently changed as Sean and Janina had wanted their own piece of the land. However, he accepted that he did not discuss the transfer of the Three Fields to Sean and Janina with Mr Hawkins until the telephone conversation on 27 January 2003.
- 129.** As I have already mentioned, Ivan could not remember that he was in fact the main person (indeed, it appears, the only person) dealing with Mr Hawkins nor that he discussed SDLT with Mr Hawkins. He denied that SDLT had anything to do with the decision to transfer the Three Fields to Sean and Janina.
- 130.** Sean and Janina are both clear in their evidence that, in Janina's words, they signed for the whole of the land. In support of this, they both refer to the existence of a plan showing the whole of the farm. In one sense, they are right that they signed for the whole of the land as they did sign all three contracts. It is also possible that there was in existence, at that time, a plan showing the whole of the farm which has been purchased. However, there is no doubt that each of the three contracts contained a plan very clearly identifying only that part of the land to which the particular contract related.
- 131.** It is clear from the inconsistencies in the evidence of all parties that nobody can remember clearly what happened in 2002/2003. The most reliable record is therefore Mr Hawkins' file.

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- 132.** As Mr Benzie has highlighted, the most compelling evidence from Mr Hawkins' file is that there is no doubt that the proposal to transfer the Three Fields to Sean and Janina came from Mr Hawkins and not from Ivan, that it came very late in the day, just two days before exchange of contracts and that the only reason for the transfer of the Three Fields to Sean and Janina was to minimise the liability to stamp duty land tax.
- 133.** Prior to this conversation (which, as I say, was initiated by Mr Hawkins), it is also clear from Mr Hawkins' file that it was intended that the entire farm should be transferred into the joint names of all four purchasers.
- 134.** Mr Hawkins notes that, once the transfers had been registered, there was then an intention to transfer the relevant parts to the appropriate couple by deed of gift. I accept that this could be consistent with both the Claimants' version of what was agreed or the Defendants' version. However, in my view, when read together with the other evidence, this letter supports the intention that the Disputed Land and the Three Fields would be owned jointly rather than that they would be owned separately.
- 135.** The reason for this is first that the only reference in Mr Hawkins' file up to this point of any part of the land being owned separately was the allocation of the Farmhouse and an appropriate area of land to Ivan and Wendy for the purposes of capital gains tax main residence relief.
- 136.** Second, had it been intended that the Three Fields would be apportioned to Sean and Janina, there is no reason why this part of the property should have been transferred into the joint names of all four purchasers and then transferred to Sean and Janina. It was already a separate title and could have been transferred direct to Sean and Janina. That this could have been done without difficulty is of course evidenced by the fact that this is exactly what happened as a result of the SDLT concerns.
- 137.** In addition, the fact that the contracts were signed by all four parties in my view supports the suggestion that it had been agreed that the land would be owned jointly. None of the parties had a clear recollection of the circumstances in which the contracts were signed or the precise date on which they were signed. However, given the clear intention that the entire farm should be held by all four purchasers at least up until two days before exchange of contracts, I infer that the contracts were signed

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before that date in preparation for exchange of contracts and that this is reason why all four individuals signed the contracts. It can be also inferred that Mr Hawkins then amended the details of the purchasers in manuscript following his discussion with Ivan on 27 January 2003. Based on the contents of Mr Hawkins' file, this is in my view the most likely explanation.

138. Taken as a whole, the evidence relating to the initial purchase in my judgment strongly supports the existence of an agreement that the Disputed Land and the Three Fields should be owned jointly by Ivan, Wendy, Sean and Janina.
139. It is clear that Ivan told Mr Hawkins at some time prior to 17 January 2003 that the farm should be held in all four names. Had there been an agreement that Sean and Janina would own the Three Fields and that Ivan and Wendy would own the rest of the land, it therefore seems very surprising that Ivan would not have communicated this to Mr Hawkins and, indeed, asked him to speak to Mr Freeman about the tax implications of this. Instead, the only suggestion that the Three Fields should be transferred to Sean and Janina comes from Mr Hawkins himself and is clearly based on considerations relating to stamp duty land tax rather than any agreement which might have been reached between the parties as to the ownership of the land.
140. Mr Benzie submits that the disparity in values of the various different parts of Springfield Farm lends further support to the Claimants' case. He notes that the joint expert has valued the Three Fields and the Barn as at January 2003 at £92,000 whilst the Farmhouse, the Disputed Land (including the Triangle) have together been valued at £433,000.
141. Everybody accepts that Sean and Janina would not have intended to make a gift to Ivan and Wendy and that both Ivan and Sean were shrewd businessmen. Mr Benzie suggests that, in these circumstances, it is inconceivable that Sean and Janina would have agreed to contribute equally to the purchase price and yet receive only approximately 18% of the value of Springfield Farm.
142. Ivan does not agree with the valuations produced by the joint expert. In his witness statement, he suggests that the Barn and the Three Fields were together worth in the region of £255,000. He also notes that, although the Farmhouse was in theory habitable (and therefore on paper worth more than the Barn) all parties were aware

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that Ivan and Wendy intended to demolish the Farmhouse and to build a new house so that, in practice, it was not worth any more than the Barn.

143. However, even if that were right, it does not explain why Sean and Janina would agree to contribute half of the purchase price and yet receive only one-third (14 acres out of approximately 40 acres) of the land, particularly bearing in mind that the land which the Defendants say Sean and Janina had agreed to accept was entirely dependent on the land which would be owned by Ivan and Wendy for access. It would be very surprising indeed if the parties considered that those two plots of land had equal value.
144. There was some suggestion that the offer to Sean and Janina to have the Barn and the Three Fields in return for paying half of the purchase price might have been made by Ivan on a “take it or leave it” basis so that, even if Sean and Janina did not believe that they were getting half of the value of the land, they might still have agreed to go ahead rather than not be involved at all.
145. Sean and Janina of course deny this and say that they would not have gone ahead on the basis of the Defendants’ version of the agreement. In any event, Ivan’s evidence is that the idea of Sean and Janina purchasing the Three Fields and he and Wendy owning the remainder of the land was a proposal made by Sean and Janina rather than an offer which made by Ivan. There was therefore no such offer which might explain why Sean and Janina were prepared to accept less than half of the land.
146. Taking all of this into account, I would accept Mr Benzie’s submission that the disparity in values does provide some support for the existence of an agreement that the land would be owned jointly rather than Ivan and Wendy owning an area representing two-thirds of the land and Sean and Janina only one-third.
147. I have not mentioned the period between exchange of contracts and completion nor the details of the actual transfer documents transferring the three pieces of land to Sean and Janina and to Ivan and Wendy. However, these simply reflect the contracts which have previously been signed and there is no evidence from Mr Hawkins’ file of anything taking place during this period which sheds any light on what was agreed.

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148. Based on the events at the time of the purchase of Springfield Farm, my provisional conclusion therefore is that there was an agreement, as the Claimants suggest, that the Three Fields and the Disputed Land should be owned jointly by Ivan, Wendy, Sean and Janina in equal shares. I do however need to consider whether this conclusion is affected by anything that has happened subsequently.

Subsequent events

149. There are two competing themes which the parties have highlighted in support of their respective cases. For the Claimants, Mr Benzie draws attention to a number of occasions on which Ivan or Wendy have demonstrated an intention that Sean (or Sean and Janina) should have 50% of the Disputed Land. Against this, the Defendants observe that, if Sean and Janina really believe that they owned 50% of the Disputed Land, there were numerous occasions on which they could have raised their concern about the land being held in the sole names of Ivan and Wendy and yet there is no evidence that they did so (at least in writing) until their letter before action in November 2020.
150. As well these broad themes, there are two specific events on which the parties have focussed. One is the construction of the stables and the menage in 2007/2008. The other is the creation of the Discretionary Trust in 2019.
151. There is no doubt that, since 2003, Ivan has shown a continuing intention that Sean should benefit from 50% of the Disputed Land and that the remaining 50% should be shared equally between his children, initially all four children but, following a rift with Russell, Sean, Suzanne and Dean.
152. Ivan's evidence was that, in principle, he and Wendy wanted their estates to be split equally between their children. However, he said it was up to them how they dealt with their assets and that it was open to them to give more to Sean if they felt like it. He readily admitted that their views would change depending on whether they felt that Sean and Janina were treating them well. If they were, Ivan and Wendy would be more generous. If not, this would not be the case.
153. However, Ivan had no explanation as to why, given his and Wendy's basic wish for their assets to be divided equally between their children, they were, on a number of

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occasions, intending to give Sean 50% of the value of Springfield Farm as well as an equal share of the remaining 50%. As Mr Benzie submits, in my view the only plausible explanation is that there had always been an agreement that, as Sean and Janina had contributed 50% of the purchase price, the farm would be held for the equal benefit of all four individuals.

154. It is telling that the occasions on which Ivan showed an intention for Sean to have 50% of the farm (as well as an equal share in the remaining 50%) started as early as June 2004 (only 18 months after the purchase). A note of a meeting between Ivan, Mr Freeman and Mr Hawkins for example notes that the land at Springfield Farm should be owned as to five-eighths by Sean and three-eighths by the other three children.
155. This was followed up by the wills signed by Ivan and Wendy in 2006 in which Sean is given 50% of the farm with the remaining 50% being shared equally between the four children. Both this and the discussions in 2004 in my view support the existence of an agreement in 2003 that the land was to be jointly owned.
156. In 2007, Sean and Janina built the stables and the menage on land which was registered in the names of Ivan and Wendy. The total cost was somewhere between £200,000 - £300,000 (the evidence is inconsistent on this point but the precise figure is not material).
157. Sean and Janina say that they would not have spent this money had they not thought that they had a 50% in the land. They say that Ivan and Wendy were fully aware of and agreed to their plans and that there was no mention of the fact that the land was in the sole ownership of Ivan and Wendy. Sean and Janina also gave evidence (supported by Dean Johnson) that Ivan was present when the outline of the stables was marked out with pegs and string prior to the work commencing.
158. Ivan conceded in cross-examination (although did not mention in his witness statement) that Sean had discussed the proposed construction of the stables with him prior to applying for planning permission. However, he says that his response was that this would just increase the value of his and Wendy's land and that he never expected Sean and Janina to go ahead with the project, hence his surprise when he and Wendy got back from an extended holiday to find the stables under construction.

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- 159.** In my view, it is significant that Sean discussed the project with his father before applying for planning permission and indeed that this is not something which Ivan mentioned in his witness statement. Although he does not say so in terms, the impression given by Ivan's witness statement is that he had no idea that the stables were going to be built.
- 160.** I am also persuaded by Dean Johnson's evidence that Ivan was present when the outline of the stables was marked out. As Mr George accepted, he was a straight-forward witness and there is no reason to reject his evidence in relation to this. Indeed, my assessment is that, of the witnesses who gave evidence in relation to this event (Ivan, Sean, Janina and Mr Johnson himself), Mr Johnson had the clearest recollection of events.
- 161.** My conclusion from this is that Ivan was indeed aware of the proposed construction of the stables and, at the very least, did not object to it even though he may not have expressly given permission.
- 162.** Having said this, there is no doubt (and it is accepted by Sean in his evidence) that Ivan later complained about the fact that the stables and the menage had been built on land which was owned by Ivan and Wendy and that it was this, together with two subsequent heated discussions between Ivan and Janina which alerted Sean and Janina to the fact that all of the farm other than the Three Fields was registered in Ivan's and Wendy's names.
- 163.** I do not however accept that Sean and Janina's decision to construct the stables provides any real support for the existence of an agreement at the time of the purchase of Springfield Farm that the land would be held in joint names. Whilst Sean and Janina say that they would not have expended the money had they not thought that they owned half of the land, they were clearly perfectly willing to, in effect, make a gift of at least half of the money which they were spending.
- 164.** It is therefore in my view just as likely that they would have spent this money in order to have the use of the stables and menage whether or not they had any interest in the land on which it was built. Indeed, since the time of the construction, they have had the use of those facilities until the start of this dispute.

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- 165.** As far as the existence of the agreement which the Claimants say was made, the construction of the stables is therefore neutral. It does not really support their claim but neither is it inconsistent with the claim.
- 166.** What is however clear is that, as a result of the discovery that the bulk of the farm was registered in Ivan and Wendy's names, there was a discussion between Sean and Ivan following which Ivan got in touch with Mr Hawkins in March 2008. Ivan's initial instructions to Mr Hawkins were to transfer the Barn to Sean and Janina. Mr Hawkins prepared a draft transfer and send this to Ivan on 26 March 2008.
- 167.** However, on the same day, Ivan called Mr Hawkins to say that he and Wendy wanted to put the whole of the farm into the joint names of himself, Wendy, Sean and Janina (as tenants in common in equal shares). Mr Hawkins advised against this as it would interfere with Ivan's ability to deal with the land as he saw fit. Nonetheless he spoke to Mr Freeman about the proposal who was concerned about the capital gains tax issues. Mr Hawkins suggested to Mr Freeman that it might be considered that there was an existing trust arrangement and that any transfer could be considered as giving effect to the existing trust.
- 168.** Despite Mr Hawkins' reservations, he prepared a transfer transferring the land owned by Ivan and Wendy (other than the Farmhouse) into the joint names of themselves, Sean and Janina and a second transfer transferring the Three Fields into the joint names of Sean, Janina, Ivan and Wendy. These were sent to Ivan on 17 April 2008.
- 169.** Whilst those transfers did not proceed (and there is no evidence either from the documents or from the witnesses as to why that was the case), this does demonstrate a continuing intention on the part of Ivan and Wendy that Sean (or Sean and Janina) should benefit from 50% of the land at Springfield Farm and again supports the existence of an agreement to this effect in 2003 when the farm was purchased.
- 170.** In September 2009, Ivan and Wendy wrote to Sean and Janina to say that they were arranging for the Barn to be put into Sean's and Janina's names and for appropriate access rights to be granted. The letter noted that when Springfield Farm was purchased, it had not been possible to agree on the "use of the land" as a result of which one part was put in Sean's and Janina's names and the other two parts in Ivan's and Wendy's names.

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171. The letter notes that it was however agreed that Sean and Janina should have the Barn and the relevant access rights. It is clear from the letter that, at this stage, relations between Ivan and Wendy on the one hand and Sean and Janina on the other were not good as the letter notes that they “don’t seem to be able to talk about things” without them going wrong.
172. This letter could be interpreted as providing some support for the Defendants’ case in relation to the agreement which was reached when Springfield Farm was purchased. However, there is no evidence from 2003 as to any agreement or discussion as to the use of the land. In addition, the clear evidence from Mr Hawkins’ file is that the reason for the transfer of the Three Fields to Sean and Janina related to SDLT. Given Ivan’s evidence about taking things away if things were going badly with Sean and Janina, this is in my view more likely to be an example of Ivan thinking that he could transfer only the Barn irrespective of what was agreed at the outset.
173. This is perhaps the first real occasion when it might have been expected that Sean and Janina would make the point that they owned 50% of the land at the farm. However, there is no evidence that they did so. Sean’s explanation for this is that he did raise the point when they all met with Mr Hawkins to sign the documents for the transfer of the Barn and the grant of the easement giving a right of way to the Three Fields but was told that the transfer of the other land would take longer as it was more complicated. Sean was not however aware what the complication was and there is no evidence that he ever followed up on this subsequently.
174. The next occasion when he might have queried the position was in April 2012 when his father sent him a message from his mother suggesting that the farm should be sold and the proceeds split down the middle. The message suggested that if he did not agree to this, Ivan and Wendy would, in any event, sell everything which was in their ownership.
175. Again, it is clear that relationships were not good at this point. Ivan’s evidence was that he and Wendy were looking for a way out as they no longer wanted to live close to Sean and Janina. Sean’s evidence is that the whole farm was put up for sale at this stage although, as it turned out, there was no interest. There was perhaps therefore no

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reason for Sean to raise the ownership issue at this point given the agreement that any proceeds would be split equally.

176. There were further occasions in 2017 when it might have been expected that Sean and Janina would mention their interest in the Disputed Land. The first is in June 2017 when Ivan, Wendy and Sean met with a financial adviser to discuss inheritance tax planning. The financial adviser refers in their subsequent email to the fact that Ivan and Wendy owned the Farmhouse and 20 acres of land. There is no suggestion that the land in question was in joint ownership.
177. Sean's explanation for this is that, if all of the land (being approximately 40 acres) was in joint ownership, the reference to Ivan and Wendy owning 20 acres would not be surprising. However, this seems to me to be unlikely to be the explanation given that the financial adviser goes on to note that the 20 acres of land is currently farmed by a company called Jelson. The inference from this is that what was being referred to was a specified area of land as opposed to a 50% interest in all of the land. It appears however that the advisers were not in fact engaged and so this was not taken any further.
178. This was followed in October 2017 with an email from Ivan to his new solicitor at Salusburys asking whether it would be possible to transfer the farmland held in his and Wendy's names to Dean and Sean. Ivan sent a copy of this email to Sean. There is no evidence that Sean responded to this email or queried the proposal. This email was not put to him in cross-examination but given that the result of the proposal would be that he would end up with 50% of the land, it does not seem to me that this proposal provides any real support to either side.
179. In January 2018, Ivan wrote again to Sean about the possibility of selling the farm asking if he would be selling "your half with us" and suggesting that if he did not want to do so, Ivan and Wendy would "go it alone". Again, this shows that, at this stage, Ivan clearly considered that he and Wendy had the right to sell that part of the farm which was registered in their names.
180. It might be thought that Sean would query his parents' right to do so if he thought that he and Janina owned 50% of the Disputed Land. However, it is clear that Sean in principle agreed to a sale of the whole farm although there is no evidence as to how

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any proceeds of sale would be split. This therefore sheds little light on what the parties' intentions were at the time the farm was purchased.

- 181.** Overall, whilst I accept that the lack of any complaint by Sean and Janina in relation to the ownership position is perhaps surprising, the specific instances during this period highlighted by Mr George do not in my view provide strong support for the Defendants' position.

The 2019 Discretionary Trust

- 182.** As I have already explained, the marketing in 2018 led to the interest from Taylor Wimpey which, in turn, was part of the driver for the suggestion made by Ivan in February 2019 that the farm should be put into a trust. Both parties place significant emphasis on the events surrounding the trust.
- 183.** The possibility of transferring the land at Springfield Farm to a trust was made by Ivan following a discussion between Sean and Dean and a subsequent conversation which Dean had with his father.
- 184.** Sean's evidence is that Dean asked him whether Ivan had sorted out the land yet and that when Sean told Dean that he had not, Dean said that he would have a word with Ivan. Dean denies saying what Sean remembers him to have said but does agree that there was a conversation about the ownership of Springfield Farm. His recollection is that Sean thought he had an entitlement to a greater share of the Farm as a result of having lived at the Farm close to his parents for a significant period of time although it is fair to say that his recollection of this was not very clear.
- 185.** What is, however, clear is that Dean came away from that discussion thinking that Sean should have a greater interest in the land and felt sufficiently strongly about this that he talked it through with his father who then sent an email to Sean, Dean and Suzanne on 4 February 2019 suggesting that all of the Farm should be put into a trust with Sean benefitting from 50% and Sean, Dean and Suzanne benefitting equally from the remaining 50%.
- 186.** It is worth noting that Ivan's justification for this in his email was that Sean and Janina had put in the same amount of money as Ivan and Wendy and was not anything to do

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with Sean having earned the right to a greater share as a result of living in close proximity to his parents.

187. Suzanne specifically confirmed that she was happy to go along with what her father was suggesting. Her evidence was that, in her mind, it was up to her parents what they did with the land.
188. Although Dean did not respond to his father by email, he suggested in cross-examination that he might have spoken to him on the telephone. He did not suggest that he had any objection to the proposal, saying that, in his view, it was up to his mother and father what they did. It is, however, fair to infer that he was content with what was being proposed given that he took the trouble to speak to his father about the ownership of the Farm following his conversation with Sean.
189. As Mr Benzie submits, it is telling that the proposal which was being made by Ivan precisely mirrors what Sean and Janina say was always the intention of the parties and what they say had in fact agreed when the Farm was purchased. It is also consistent with what Ivan showed his intention to be in the discussions with Mr Hawkins and Mr Freeman in 2004, the way in which he structured his will in 2006 and the instructions to Mr Hawkins in April 2008.
190. On the other hand, as Mr George points out, this was another occasion on which it might have been expected that Sean and Janina, if they genuinely believed that they had a 50% interest in the Disputed Land, would have raised this point in the context of the proposal that the Disputed Land should be transferred into the proposed discretionary trust.
191. Sean's recollection is that he mentioned this at the subsequent meetings with Obsidian (the tax adviser engaged by the family) but there is no evidence of this in the report which was subsequently produced by Obsidian from which it is clear that, as far as they were concerned, the land was owned by Ivan and Wendy. The advice they gave in relation to tax was clearly premised on this basis.
192. Sean's failure to speak up about his and Janina's interest in the Disputed Land is perhaps all the more surprising given that it is clear from Ivan and Suzanne's evidence that, once Sean and Janina had decided that they did not want to put the Three Fields

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into the trust, the intention was that the land in the Trust would be held for the equal benefit of Sean, Suzanne and Dean rather than Sean having a greater share.

- 193.** Mr George also drew attention to the exchange of correspondence between Ivan and Sean in September 2019 in relation to the Taylor Wimpey option. This suggested that the proceeds of sale of any part of the Disputed Land (which Ivan believed had been transferred to the Trust in August 2019) should be shared equally between Sean, Suzanne and Dean. Again, Sean did not query this. His explanation for not doing so is that sometimes there was just no speaking to his father about these sorts of things. Given the state of the relationship between Sean and his parents over the preceding 10 years, there may well be some truth in this.
- 194.** It is, however, clear that Sean did raise the issue with Ivan on 30 December 2019 when Sean sent a message to his father asking what was going on given that they had bought the farm jointly and complaining that Suzanne and Dean seemed to have gone against him despite knowing that the farm was half his.
- 195.** Ivan replied the same day reminding Sean that Salusburys made a mistake in putting the Barn in Ivan and Wendy's name, but suggesting the farm had been divided into what he described as the two halves because that was what Sean had wanted. Ivan goes on to say that his and Wendy's part of the farm should be split between Sean, Suzanne and Dean, and that this is exactly what the Trust was designed to achieve. Sean's response is to complain that Dean and Suzanne should not have a say over "bits that should be shared out properly between me and you".
- 196.** It seems clear from this exchange that Sean believed that he was entitled to half of the farm whereas Ivan's point of view was that Sean and Janina were entitled to the Three Fields whilst he and Wendy were free to do what they wanted with the Disputed Land. This does not therefore take matters much further in terms of assisting either side as it simply highlights that, at this stage, there was a difference of opinion as to what had been agreed.
- 197.** Overall, the events surrounding the Trust in my view provide more support to the Claimants than the Defendants. There seems to be a clear recognition (or, at least, an acceptance) by all parties (not just Ivan but also Suzanne and Dean) that Sean (and Janina) should benefit from half of the farm. It is difficult to explain this if this is not

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what had been agreed when it was purchased. It is also clear that Sean did (eventually) object to the proposal that the Disputed Land should be put into the Trust, even if he did not say anything at the start of the process.

Conclusions in relation to common intention

- 198.** There is strong evidence from the time of the original purchase that the agreement was that the Three Fields and the Disputed Land (including the Triangle) should be owned jointly by Ivan, Wendy, Sean and Janina. The only reason the Three Fields were transferred to Sean and Janina and the remaining land to Wendy and Ivan was to save Stamp Duty Land Tax.
- 199.** Ivan in particular (but also Wendy) has consistently shown an intention that Sean (or Sean and Janina) should benefit from 50% of the Farm as well as having an equal share of the remaining 50%.
- 200.** While Sean has done little over the years to formalise what he believed to be his rights, he did do so in 2008 when he first discovered the position in relation to the legal ownership of the Farm and did so again at the end of 2019 when the disagreements in relation to the Trust came to a head.
- 201.** Sean's failure to speak up at other times (at least in writing) may be explicable by his desire not to damage his relationship with his parents further but in any event, I do not consider that the fact that he did not do so outweighs the other evidence which points in favour of there being a common intention (and indeed an express agreement) at the time of the purchase of Springfield Farm that Sean and Janina should have an equal interest in the land.
- 202.** Although it is not a point which was raised by Mr George, there is little doubt in my mind based on the documentary evidence that, notwithstanding the agreement which I have found to exist in relation to the purchase of the Farm, Ivan came to believe that he and Wendy were the owners of the land registered in their names and could do what they wanted with it.
- 203.** In my view, however, this is consistent with the picture which emerges of Ivan's character. As Mr Benzie observes, he is somebody who likes to be in control of things and the legal ownership of the land gave him that control. He clearly knew that there

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was an intention that he and Wendy on the one hand and Sean and Janina on the other should benefit equally from the land at the Farm but he wanted this to be on his terms so that he could give or take away as he saw fit, depending on the relationship with Sean and Janina at any given time.

- 204.** I should also mention, although again it is not a point raised by Mr George, that it appears that Mr Hawkins and Mr Freeman thought that Ivan and Wendy were not only the legal but also the beneficial owners of the land registered in their names.
- 205.** This is apparent from their discussions about the potential tax implications of transferring land from Ivan and Wendy to Sean and Janina as well as the fact that Mr Hawkins' firm drew up wills for Ivan and Wendy containing provisions relating to Springfield Farm which would only make sense if Ivan and Wendy were the beneficial owners of the land. An example of this is the 2006 will which I have referred to which leaves the Barn and 50% of the remaining land to Sean as well as giving Sean an equal share in the remaining 50%.
- 206.** However, there is no evidence as to what Mr Hawkins and Mr Freeman knew about any agreement between Ivan and Wendy on the one hand and Sean and Janina on the other. It may well be, for example, that their belief can be explained on the basis that they were simply never told what had been agreed. This is to some extent supported by Mr Hawkins' note of his telephone conversation with Mr Freeman in March 2008 which, when discussing the possibility of the existence of a trust, suggests that Mr Hawkins was not aware that Sean and Janina had in fact contributed to the purchase price of Springfield Farm.
- 207.** Without more, the views of the advisers cannot be given any significant weight in determining what was agreed between the parties at the time of the purchase.
- 208.** Taking everything into account, for the reasons I have explained, I am satisfied on the balance of probabilities that, when Springfield Farm was purchased, it was agreed that the Three Fields and the Disputed Land (including the Triangle) should be held beneficially by Ivan, Wendy, Sean and Janina in equal shares.
- 209.** I have been careful to bear in mind my concerns about Sean's credibility in the light of my conclusions about the Disputed Letter but, as will be apparent, I have relied

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principally on the documentary evidence (although have not ignored the witness evidence of the defendants) in reaching my decision on this point.

- 210.** Given my conclusion, there is no need for me to deal with the claims made in relation to proprietary estoppel, unjust enrichment and the status of Springfield Farm as partnership property. I will, however, address these points very briefly given that some submissions were made in relation to them.

Proprietary estoppel

- 211.** In order to succeed in a claim based on proprietary estoppel, the claimant must show that there has been a representation or assurance made to the claimant and that the claimant has reasonably relied on that representation or assurance to their detriment (see *Thorner v Major* [2009] 1 WLR 776 at [29]).
- 212.** The Defendants are prepared to concede that, if there were any representations or assurances which were relied on, there is a detriment to the Claimants. However, Mr George submits that there was no reasonable reliance by Sean or Janina on any representations or assurances (or encouragement) given by Ivan or Wendy as it is quite clear from the evidence (and indeed emphasised by Mr Benzie) that Ivan was a man who frequently changed his mind as to what somebody should get based on whether or not they were being nice to him.
- 213.** I should make it clear that, as the question of proprietary estoppel only arises if I had found that there was no agreement at the time of the purchase of Springfield Farm that Sean and Janina should have a 50% beneficial interest in the Disputed Land, there cannot have been any representation or assurance which could found a claim in proprietary estoppel at the time of the purchase.
- 214.** After that, there is no evidence of any representation or assurance given to Sean or Janina until they discovered the problem with the title in 2008. Although Ivan and Wendy clearly had some intention to give Sean 50% of the land in 2004 and drew up wills in 2006 which did in fact give Sean 50% of the Disputed Land, Sean's evidence was that he was not aware of the 2006 wills (or indeed any of Ivan and Wendy's wills) until these proceedings had commenced. There is no suggestion that Sean and Janina were aware of Ivan's discussions with Mr Hawkins in 2004.

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- 215.** The Claimants say that there was a tacit assurance or encouragement that they would have a 50% interest in the Disputed Land in 2007 when the stables and the menage were constructed. However, it is difficult to see how there can be any such tacit assurance or encouragement when there has not previously been a suggestion that Sean and Janina should have some sort of interest in that land. As I have already said, it is clear that Sean and Janina were willing to make a gift when constructing the stables and menage as, even on their own case, they only believed they had an interest in 50% of the land on which it was constructed.
- 216.** In these circumstances, even if Ivan and Wendy had specifically agreed to the buildings of the stable and the menage and notwithstanding any failure by Ivan and Wendy to point out that they were the sole owners of the land, this does not in my view carry with it any suggestion that Sean and Janina were to have an interest in the land on which they were constructed, still less that they should have an interest in the entirety of the Disputed Land.
- 217.** It is not clear from the evidence whether Sean and Janina were aware of the instructions given by Ivan to Mr Hawkins in March and April 2008. However, even if they were, and that this could be interpreted as a representation or assurance that they were to have a 50% interest in the Disputed Land, the Claimants do not plead any acts of detrimental reliance which took place after this date.
- 218.** The detriment relied upon consists of the contribution to the purchase price, the building of the stables and work which Sean says he undertook in relation to the Disputed Land. The contribution to the purchase price and the building of the stables were clearly before April 2008.
- 219.** The works identified by Sean in his witness statement primarily relate to projects which were undertaken soon after the purchase of the Farm, such as supervising the construction works to the Barn and the Farmhouse, digging up and re-stoning the driveway to the houses, revamping the caravan storage area and helping with (and paying for) the construction of the garages.
- 220.** In any event, Sean and Janina had an interest in these works whether or not they had any interest in the Disputed Land, given that the works benefitted the Barn (which

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they did own), the garages (which they owned half of), and the caravan storage business which was carried on in partnership with Ivan and Wendy.

- 221.** There was therefore in my view no representation, assurance or encouragement that Sean and Janina should have an interest in the Disputed Land and which was relied on to their detriment.
- 222.** In any event, given the lack of clarity in relation to any such assurance or encouragement, I accept Mr George's point that it would be unreasonable for Sean and Janina to rely on it without further discussion given Ivan's propensity to change his mind depending on the state of family relationships (as was, for example, demonstrated in relation to the split with Russell in 2004).

Unjust enrichment

- 223.** Mr Benzie had some difficulty in formulating the claim in relation to unjust enrichment. The basic requirement is that the defendant has been enriched at the claimant's expense and that the enrichment was unjust on the basis of some factor which is recognised as triggering the remedy (see *Dargamo Holdings Limited v Avonwick Holdings Limited* [2021] EWCA Civ 1149 at [51-59]).
- 224.** The particular unjust factor identified by the Claimants is "failure of basis" which Mr Benzie notes is described by the Court of Appeal in *Dargamo* at [79] as a situation where:

"a benefit has been conferred on a joint understanding that the recipient's right to retain it is conditional. If the condition is not fulfilled, the recipient must return the benefit".

- 225.** Mr Benzie submits that, in this case, the failure of basis results from the fact that there was a common understanding that Sean and Janina had a 50% interest in the land upon which the stables was built. However, of course, if there were such an understanding that would be sufficient (subject to the requirement for detrimental reliance) for a common intention constructive trust to arise. The question as to whether there is a claim in unjust enrichment is therefore only relevant if there is no such common intention.

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226. In closing submissions, Mr Benzie suggested that it was sufficient that Sean and Janina simply thought that they owned 50% of the land. However, I do not accept that such a unilateral belief can constitute a failure of basis for the purposes of a claim in unjust enrichment. It is clear from the authorities (summarised in *Dargamo*) that both parties must contemplate a particular state of affairs. Indeed, in the passage I have quoted above, it is made clear that there must be a "joint understanding".
227. The claim in unjust enrichment cannot therefore succeed.

Partnership property

228. The Claimants rely on sections 20 and 21 Partnership Act 1890 which provides that property acquired on account of the firm or for the purposes and in the course of the partnership business or with money belonging to the partnership will be partnership property.
229. Mr Benzie made no real submissions in relation to this aspect of the Claim, although did not formally abandon it.
230. In my view, however, there is no evidence that the Disputed Land was acquired on account of the partnership or for the purposes of the partnership business nor that the money used for the purchase belonged to the partnership.
231. It is accepted that there was a partnership in relation to the caravan storage business. The caravan storage business was of course conducted on part of the Disputed Land but it does not in my view follow from this that the Disputed Land was acquired for the purposes of the partnership business bearing in mind that the vast majority of the Disputed Land had no connection with the caravan storage business.
232. There is also a suggestion that the funds used to purchase Springfield Farm were paid into the partnership bank account with HSBC and then used for the purposes of the purchase. The Particulars of Claim make it clear that what the Claimants are saying is that the funds in the bank account were partnership property and therefore the land is partnership property as it was acquired using partnership funds.
233. However, it is clear (as the Particulars of Claim acknowledge) that it was never intended that the Barn or the Farmhouse should be partnership property. It is

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therefore difficult to see why it should be the case that the remaining land was intended to be partnership property even if the funds for the purchase did pass through the partnership bank account.

- 234.** There is no evidence of any intention that the land was intended to be partnership property other than the fact that a small part of the land was to be used for the purposes of the caravan storage business which clearly was the purpose of the partnership. If the purchase money did pass through the partnership bank account (and there is no evidence that it did), this was in my view simply a matter of convenience and not because there was some agreement that the funds should become part of the partnership assets.
- 235.** I note that, in his witness statement, Sean refers to the purchase of the Farm as a partnership. However, in the absence of any evidence supporting this, I do not accept that this shows any intention that the land itself should be a partnership asset given that no distinction was made between the Barn, the Farmhouse and the Disputed Land (other than the Triangle), all of which were transferred to Wendy and Ivan as part of a single title and that it was clearly not intended that the Barn or the Farmhouse would be partnership property.
- 236.** Again, it must be borne in mind that I am considering the question as to whether or not the Disputed Land is partnership property on the basis that there was no common intention at the time of the purchase that the Disputed Land and the Three Fields would be held jointly by Ivan, Wendy, Sean and Janina. In these circumstances, it would be surprising if the parties intended that this land should be partnership property given that this would then give rise to precisely the same result.

Conclusion

- 237.** For the reasons set out above, I am satisfied that, at the time of the purchase of Springfield Farm, the Disputed Land (including the Triangle) and the Three Fields there was a common intention that they should be owned jointly and that this intention was relied on by Sean and Janina to their detriment so that, notwithstanding the lack of any writing, the land in question became held upon a common intention constructive trust for the benefit of Ivan, Wendy, Sean and Janina as tenants in common in equal shares.

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- 238.** As accepted by the Third and Fourth Defendants, they are bound by this common intention constructive trust so that they hold the Disputed Land (other than the Triangle which remains with Ivan and Wendy) upon trust as to 50% for Sean and Janina as tenants in common in equal shares and as to the remaining 50% upon the terms of the settlement.
- 239.** I would ask the parties to agree the form of an order giving effect to this judgment, including provision (unless agreed otherwise) for the transfer of title to the Disputed Land into the names of Sean, Janina, Suzanne and Dean and the transfer of the title of the Three Fields and the Triangle into the names of Sean, Janina, Ivan and, if appropriate, Wendy. The order may also, should the parties wish to do so, confirm the termination of the caravan storage partnership and deal with the steps to be taken in relation to the division of the remaining partnership assets.