Neutral Citation Number: [2023] EWHC 2393 (Ch)

Case No: PT-2021-BRS-000057

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

Bristol Civil Justice Centre
2 Redcliffe Street
Redcliffe
Bristol BS1 6GR

Date: 29 September 2023

Before:

MR JUSTICE ZACAROLI

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Between :

(1) RICHARD WINTER **Claimants**

(2) ADRIAN WINTER

- and –

(1) PHILIP WINTER **Defendants**
(as executor of the estate of Albert Henry Winter (Deceased))

(2) CLARKE WILLMOTT TRUST CORPORATION LIMITED

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Hugh Sims KC and Michael Selway (instructed by **Berensens Solicitors**) for the **Claimants**
Alex Troup KC (instructed by **Ashfords LLP**) for the **Defendants**

Hearing dates: 18th, 19th, 20th and 21st July 2023
Further submissions filed on 17th and 30th August 2023

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JUDGMENT

Mr Justice Zacaroli:

Introduction

1. The claimants, Richard Winter and Adrian Winter and the defendant, Philip Winter are brothers. The claim is brought to challenge the dispositions made by their father, Albert Winter, in his will dated 30 April 2015 (the "2015 Will"). For convenience, and without intending any disrespect, I will refer to the members of the Winter family by their forenames.

2. The principal asset in Albert's estate is his share in the market garden business which the family had operated together for many years. This had been operated since 1988 as a partnership, known as Team Green Growers (the "Partnership") between Albert, his wife, Brenda, and the sons. The principal land from which the business operated, Bower Farm in Bridgwater, Somerset ("Bower Farm"), was owned by Albert and Brenda, but was the subject of a declaration of trust by them dated 29 March 2000 in favour of the Partnership. Other properties were later purchased by the Partnership.

3. On Brenda's death on 13 April 2001, her share in the Partnership vested under her will date 29 March 2000 in Richard, Adrian and Philip in equal shares. The residue of her estate passed to Albert.

4. The Partnership was thereafter in practice continued between Albert (who had a 20% share) and the sons (each of whom had a 26.66% share) but in January 2004 the business (but not the property) was transferred to a company, Team Green Growers Ltd (the "Company"), of which Albert and the sons were equal shareholders.

5. Albert died on 17 July 2017. By the 2015 Will he left a gift of £20,000 to his then partner Diana Turner and left the residue of his estate – including his interests in the Partnership and the Company – to Philip.

6. The claim is put on two principal bases.

7. First, the claimants contend that Brenda and Albert made mutual wills in the same terms as the will Brenda made in 2000. Although the executed version of the will Albert made on 29 March 2000 has not been found, it is common ground that he then made a will in terms that were materially the same as Brenda's 2000 will. It is contended that Albert's estate is subject to a constructive trust to give effect to the terms of his will of March 2000.

8. Second, the case is put on the basis of proprietary estoppel. The claimants contend that Brenda and Albert made numerous assurances to them to the effect that, if they committed their lives to working in the family business, the parents would leave everything (or, at least, their share of the land and farming business) to the sons equally, and that Richard and Adrian relied to their detriment on those assurances.

9. The case as pleaded was also put in the alternative on the basis of constructive trust. During the course of the hearing, however, it became clear that this added nothing to the proprietary estoppel case, and it was not pursued in closing. A further pleaded case based on contract to make a will was also not pursued. Finally, and in the

alternative, the claimants seek to enforce an option to purchase Albert's share under the Partnership agreement.

The background facts

10. In this section, I set out the essential background facts which, unless otherwise stated, were not in dispute.

11. Brenda and Albert were married in 1964. Richard was born in 1966, Philip in 1967 and Adrian in 1968. In 1964 Albert purchased Bower Farm. The family lived in a bungalow on the farm, and Albert and Brenda ran a market garden business, specialising in lettuces, from it. In about 1988 Bower Farm was transferred into the joint names of Brenda and Albert.

12. From a very early age, the three sons helped with work on the farm. The sons gave slightly differing accounts of how arduous life was: Philip insisted that these were happy times with plenty of time for other activities; Richard and Adrian emphasised the lack of holidays and Albert's authoritarian approach to parenting. I have no doubt that the work was hard and the hours were long, after school, at weekends and in the holidays, but that there was nevertheless time for pursuing some other leisure activities.

13. After the sons left school, they continued working in the business, but now full time. Numerous witnesses spoke of the strong desire expressed on many occasions by Brenda that the boys would be fully involved in the family business, working for the common good of the family.

14. The sons did indeed devote their lives to working in the family business, apart from two occasions.

15. The first involves Richard, who wished to join the military after school. He was, however, invalided out of the Parachute Regiment during initial training, and then abandoned his plans to join the Royal Marines, in favour of working on the farm. Although Philip disputes the extent to which Richard would have chosen the farm over the Marines in any event, and Richard himself says that by this time he was in a committed relationship with Paula, who subsequently became his wife, I am satisfied that at least part of the motivation for remaining on the farm was Albert's attitude that if Richard chose the Marines, then he would be cut off from the family whereas, if he stayed and committed to building the business, he could expect to share in it.

16. The second involves Adrian. After a falling out with Albert, in 1996 he left the business to work at the Royal Ordinance Factory for a few months. This was followed by other sundry jobs, before returning to work in the family business. Again, while there were no doubt contributing reasons for Adrian's return, I am satisfied that part of the motivation for coming back was the fact that his father had made it clear to him that if he left, then he would lose any share in the business.

17. In 1988, and in part as a response to Richard's plea that arrangements be formalised following his decision to commit to the business rather than the Marines, Albert and Brenda formed the Partnership. They did so without consulting the sons, simply

telling them that it had been done, and that they now all had a 1/5 share in the business.

18. Between 1988 and 1991 each of the sons purchased, together with their partners (who subsequently became their wives), a home to live in.

19. In the late 1990s, the Partnership business changed from lettuces to strawberries. That continued to be the main business of the Partnership until Albert's death in 2017.

20. In 2000, the beneficial interest in Bower Farm was transferred to the Partnership, pursuant to the deed of trust executed by Albert and Brenda. On Brenda's death, a year later, Brenda's share in the Partnership passed to the sons (so that they each now had a 26.66% share in the Partnership, with Albert having the remaining 20% share), pursuant to her will dated 29 March 2000.

21. Although there is much in dispute over the precise nature of the assurances made by Albert and Brenda, it is not disputed that it was Albert's desire for each son to have his own farm. With that aim in mind, over the course of the next few years the Partnership acquired two other farms. In October 2001, a farm at North Newton, which subsequently became known as "One Tree Farm" was purchased in the name of the Partnership. In 2009, using Partnership funds, a new 4-bedroom farmhouse was built on One Tree Farm, which became Adrian's home. In July 2008, the Partnership acquired a further farm ("Barton Farm"), which became Philip's home. In 2011, with the benefit of funds borrowed by the Partnership, a new 4-bedroom farmhouse was built on Bower Farm, which became Richard's home.

22. Until about 2013-2014, relations between the sons, and between them and Albert, remained on the whole good. Although Albert and the sons were equal partners, important decisions were left to Albert and Brenda (and to Albert after Brenda's death). It was common ground that, although Albert held only one quarter of the shares in the Company, until about 2014 he exercised effective control over its affairs.

23. Although the parties each sought to place a different emphasis on the extent to which the sons received benefits from their involvement in the business, it is clear that, until about 2015, the sons were paid relatively little for their work. From a base position of between £100-£200 per week in the early 1990s, the amount that each son received (by way of drawings, whether from the Partnership or the Company) rose thereafter to £700 per week between 2009 and 2015. In addition, however: they lived in their respective properties at well below market rent (£100 per week from 2009 onwards); their tax and national insurance liabilities were paid by the business; they had the use of company cars; they received (albeit in relatively small amounts) further payments from time to time from amounts set aside in cash from the flower business; and they had free holidays at a static caravan their parents bought in Exmouth in 2000.

24. Most significantly, as the business grew in size, and profits increased, each of the sons had an entitlement to an equal share (with their parents) in the profits generated (first in the Partnership and then in the Company). Aside from the drawings I have already mentioned, however, until 2015 all such profits were retained in the business. Prior to 2004, profits were added to the capital or current accounts of the partners. From 2004, dividends declared by the Company, together with any salary entitlement over and above the amounts drawn each week, were credited to the directors' current accounts.

25. In about 2013-2014, relations between Richard and Adrian, on the one hand, and Albert and Philip, on the other, began to deteriorate. Philip had grown much closer to Albert following Brenda's death, partly because Philip had spent time comforting his father, while Richard and Adrian focused more on the business.

26. The business had run into financial difficulties. The Partnership's borrowing had increased in order to fund the purchase of additional property and the building of the new farmhouses referred to above. A new company was set up to carry on the business of fabricating sheds, poly tunnels, table tops and the like. Philip ran this side of the business, which was loss making. He was also moving into cattle farming at Barton Farm, and operating an agricultural contracting business. Richard and Adrian blamed Philip for at least part of the financial difficulties (including accusing him of not accounting properly to the Company for work carried out in the fabrications or contracting business). Philip in turn blames the financial difficulties on the loans taken out to fund the building of Adrian's and Richard's houses. He also blames Richard and Adrian for trying to defeat everything he and Albert were doing. As disputes were raised, Albert generally sided with Philip.

27. Things came to a head in about 2014, when Lloyds Bank, with whom the Company had an overdraft, required the Company to sort out its financial difficulties if it wanted further overdraft facilities. An independent business consultant, Mr John Pelham, was instructed to review the business and develop a plan for resolving the difficulties. With Mr Pelham's help a plan was developed which involved the discontinuation of soil-grown strawberries at One Tree Farm and Barton Farm, and the sale of farming machines, and certain surplus acreage, at those locations. Despite agreeing to the plan, Albert and Philip were unhappy with it. Philip took steps to obstruct its implementation, purchasing 200,000 strawberry plants for use at Barton Farm, despite the agreement to cease production there.

28. According to handwritten notes made by Albert at around this time, he was contemplating dividing the business equally between him and Philip on the one hand, and Richard and Adrian on the other. He wrote in his notebook: "I was told in no uncertain terms that my 20/25% partnership and business assets are not mine to take with me: Richard and Adrian believe they are entitled to a third each of my 20/25% share and if I partner with Philip they are threatening to take me to court on grounds that I [sic] share should be split equally between the three partners/directors … Would this stand up in court as surely I am still entitled to take my share to do with as I will."

29. The state of relations is reflected in a letter from Mr Anthony Porter, the accountant to the business, on 13 October 2014, in which he advised that:

> "It is clear from speaking to each of the directors that lack of communication and lack of teamwork has reached such a position that it is not possible to operate as a unified management and this is already having detrimental effects on the running of the business and its efficiency. This is not to say that the business could not carry on as it is almost indefinitely, but the results would be detrimentally affected and it would also be of further detriment to family relationships and the Bank's decision on funding the business at its current level. I cannot, in all conscience, recommend that as directors you allow the management to carry on as it has been for the last two years and that, for the good of

the business and for the good of the family, an alternative policy is adopted. "

30. He recommended either that control was assumed by one family member, at least for two or three years, or that the assets of the Company and the Partnership were sold, with remaining cash after repayment of liabilities being distributed to each of them as partners and shareholders. The former option was initially adopted, in that Albert and Philip stepped back from the business and Richard assumed effective control.

31. It was at that point that much larger salaries and dividends were approved. In 2015, for example, Richard and Adrian received gross earnings of approximately £100,000 (made up of salary, bonus and dividends). Philip and Albert continued to receive salaries and dividends, albeit in smaller sums, although not continuing to contribute to the business. Significant pension contributions were also made for the three sons.

32. Although Albert's contemplated plan of splitting the business 50/50 did not go anywhere at the time, it was partially reflected in his decision to make the 2015 Will. According to an attendance note of his meeting with Mr Stuart Thorne (of Clarke Willmott, solicitors, who advised Albert and Brenda) on 9 March 2015, Albert was upset at his treatment by Richard and Adrian in the years since Brenda had died. He said he wanted to put the money he had spent 50 years earning in a safe space, and that Adrian "would drink it and I do not want that to happen". He said he intended to leave nothing to Richard or Adrian: "they have been very well set up and have a share of Bower Farm which is likely to go for development in years to come." In contrast, "Philip is my understudy and we are joined at my arm. He has been fantastic to me and every night has called in and was particularly supportive after Brenda died."

33. By 2015 Albert's health was failing. He suffered with heart problems, and had a pacemaker fitted. The breakdown in relations between him and both Richard and Adrian, is such that they saw nothing of him in the final years of his life. They did not visit him in hospital during his last weeks and did not attend his funeral. Albert died on 17 July 2017.

34. Following Albert's death, the Company and the Partnership have ceased trading, and the assets have all been (or are due to be) sold.

35. Bower Farm was sold in June 2021 for £7.8 million + VAT. Its value was estimated by AMC (the secured lender to the Partnership) in July 2017 at £1.75 million, and Albert's one quarter share had been valued for probate purposes in January 2018 at £273,375, after a 10% discount for joint ownership, which valued Bower Farm as a whole at £1.215 million. As recorded in the attendance note of Albert's meeting with Mr Thorne on 9 March 2015, however, it was known that Bower Farm had development potential. Outline planning permission was granted for the development of Bower Farm into a residential estate in June 2018. Its sale at the much increased price of £7.8 million + VAT is for such development. Although it was suggested in cross-examination of Richard and Adrian that the increase in value of Bower Farm is a recent, and unexpected, development, I find that the development *potential* at Bower Farm had been known about for many years. Philip accepted in cross-examination that the family had always (even since the mid 1980s) had in mind that Bower Farm might be ripe for development one day, and that it had been envisaged – at least at the

time of the acquisition of Barton Farm – that Barton Farm would be the successor farm to Bower Farm if and when the latter was sold for redevelopment.

36. One Tree Farm was sold for £885,103 in November 2021. Barton Farm has been contracted to be sold to Philip for £1.59 million, but completion is held up pending resolution of this dispute between the brothers.

37. As a consequence of the retention of profits within the business over more than two decades and the increase in the capital value of the farms themselves, each of Richard and Adrian has benefitted very substantially from his involvement in the family business. In round terms, the value of final distributions from the partnership and the Company to each of Richard and Adrian is in the region of £2 million. The actual figure is not certain, partly because of the possibility of additional capital gains tax liabilities and partly because it has been assumed that each of the sons' interest in the Partnership and the Company is 25%, whereas under the terms of Brenda's will they should each have had a 26.66% interest in the Partnership. The parties were unable to explain this discrepancy. Each of them has, with the money distributed to them, purchased their own farm.

38. With the caveat that it is subject to the same uncertainties, the value of Albert's estate is approximately £1.7 million, of which approximately £233,000 represents his personal estate, the rest consisting of his share in the Partnership and the Company.

Proprietary estoppel

The law

39. A recent, comprehensive outline of the elements required to establish a claim in proprietary estoppel was provided by Lewison LJ in *Davies v Davies* [2016] EWCA Civ 463, at §38:

> "(i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776, [2009] 2 FLR 405, at [57] and [101].
>
> (ii) The ingredients necessary to raise an equity are:
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> (a) an assurance of sufficient clarity;
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> (b) reliance by the claimant on that assurance; and
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> (c) detriment to the claimant in consequence of his reasonable reliance: *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776, [2009] 2 FLR 405, at [29].
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> (iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often

intertwined, and whether there is a distinct need for a 'mutual understanding' may depend on how the other elements are formulated and understood: *Gillett v Holt* [2001] Ch 210, at 225; *Henry v Henry* [2010] UKPC 3, [2010] 1 All ER 988, at [37].

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

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

(vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: *Jennings v Rice* [2002] EWCA Civ 159, [2003] 1 FCR 501, at [56].

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

(viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: *Jennings v Rice* [2002] EWCA Civ 159, [2003] 1 FCR 501, at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: *Jennings v Rice*, at [50] and [51].

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

40. The question of the appropriate remedy must now be determined in accordance with the decision of the Supreme Court in *Guest v Guest* [2022] UKSC 27; [2022] 3 WLR 911. The approach to be taken is set out by Lord Briggs at §74 to §80.

41. Having first determined that the repudiation of the promise is, in light of the promisee's detrimental reliance on it, unconscionable, in considering the appropriate

remedy the starting assumption will normally be that "the simplest way to remedy the unconscionability constituted by the repudiation is to hold the promisor to the promise". If, however, the promisor proves (the burden being on him for this purpose) that specific performance of the full promise, or its monetary equivalent, would be "out of all proportion to the cost of the detriment to the promisee", then the court may be constrained to limit the remedy. He explained this as follows:

> "This does not mean that the court will be seeking precisely to compensate for the detriment as its primary task, but simply to put right a disproportionality which is so large as to stand in the way of a full specific enforcement doing justice between the parties. It will be a very rare case where the detriment is equivalent in value to the expectation, and there is nothing in principle unjust in a full enforcement of the promise being worth more than the cost of the detriment, any more than there is in giving specific performance of a contract for the sale of land merely because it is worth more than the price paid for it. An example of a remedy out of all proportion to the detriment would be the full enforcement of a promise by an elderly lady to leave her carer a particular piece of jewellery if she stayed on at very low wages, which turned out on valuation by her executors to be a Fabergé worth millions. Another would be a promise to leave a generous inheritance if the promisee cared for the promisor for the rest of her life, but where she unexpectedly died two months later."

42. Lord Briggs endorsed, at §77, Lord Walker's "spectrum" (see Lord Walker's comments in *Jennings v Rice* [2003] 1 P&CR 8 at §44 and in a subsequent lecture, as explained by Lord Briggs in *Guest* at §43) between a case where the promise and detriment are reasonably precisely defined by the time the promise is repudiated, where the one is in a sense the quid pro quo of the other, although falling short of contract, and where either one or both are left much less certain. The case for full specific performance is strongest at the quasi-contractual end of the spectrum.

43. He summed up the approach at §80:

> "In the end the court will have to consider its provisional remedy in the round, against all the relevant circumstances, and ask itself whether it would do justice between the parties, and whether it would cause injustice to third parties. The yardstick for that justice assessment will always be whether, if the promisor was to confer that proposed remedy upon the promisee, he would be acting unconscionably. "Minimum equity to do justice" means, in that context, a remedy which will be sufficient to enable that unconscionability question to be answered in the negative."

<u>The assurances</u>

44. To establish a proprietary estoppel, the relevant assurance must be "clear enough". What amounts to sufficient clarity is "hugely dependent on context": *Thorner v Major* [2009] UKHL 18; [2009] 1 WLR 776 (above), per Lord Walker at §56, quoting with approval, Lord Hoffmann's statement in *Walton v Walton* [1994] CA Transcript No.479 at §16:

> "The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made."

45. In *Thorner* itself, the relevant assurance (that the claimant would receive the farm of the deceased on his death) was spelled out from various oblique comments by the deceased, which had to be read against the background that these were two taciturn, undemonstrative men who communicated obliquely but understood each other well.

46. In considering whether and, if so, what assurances were made, I bear in mind Lord Walker's comment in *Thorner v Major* (above), at §60, that a trial judge should subject the evidence (whether as to assurances, reliance or detriment) to careful, and sometimes sceptical, scrutiny. I also bear in mind that many of the events were long ago and that there is considerable risk of misinterpretation of things said within an informal family context. As Lord Neuberger MR said in *Gill v Woodall* [2011] Ch 380, at §16, in the slightly different context of a challenge to a will, human nature is such that disappointed relatives will often persuade themselves that evidence exists that supports their case.

47. There was considerable common ground among the principal witnesses, Richard, Adrian and Philip, as to the nature of the assurances made by to them by their parents.

Richard and Adrian

48. Richard and Adrian referred in evidence to it being a constant refrain from Albert and Brenda over many years that the sons were expected to work hard in the family business because in so doing they were working "for their futures". This refrain was used, in the early years, to justify the sons working long hours for little remuneration. In later years, it was used to justify the decision to reinvest all the profits in the business, rather than paying large salaries or any dividends.

49. Richard's witness statement contained references to assurances given in 1987 and 1988, at the time he had been considering joining the military but chose to remain in the business. He said that he chose the farm "as Mum and Dad said that we sons … were all working for our futures, and that the business we were building would be ours in the future."

50. In addition to recalling that Albert said things like "we were working for our futures", and "we were working as a family for the common good" he referred to both Albert and Brenda saying, "it will all be yours one day". He recalls, for example, his parents saying, when he was considering joining the Marines, that "if we stayed on in the business, we would build the business and it would all be ours one day."

51. His evidence on this latter point is weakened, somewhat, by the fact that he appeared to accept that the assurances made to him were satisfied when he and his brothers were brought into the Partnership, on an equal basis, with his parents. In his witness statement, he said that following his decision to remain with the family business he pushed Albert to "formalise the promises to us" and that this helped to lead to the formation of the Partnership in 1988. He said that he remembered telling his father "pay me what I am due and then you owe me nothing or until then make us equal

partners in the business." In his oral evidence he explained that by "pay me what I am due" he was referring to the fact that he had been underpaid for the hard work he had done within the business.

52. He did go on, in his witness statement, to say that it had been pointed out to him that the Partnership agreement does not provide for where his parents' shares go on their death. (That is in fact not quite right, because the Partnership agreement provides that on the death of any partner, the others have the option to buy the deceased partner's share, although I doubt that any of the family paid attention to the details of the Partnership agreement.) Richard said that his parents' promises *had* provided what would happen on their deaths, so that it follows that the Partnership agreement only gave the sons part of what had been promised. He described the Partnership agreement as "an acknowledgment in some legal document that we were all equal partners", although this appears to be an after the event explanation and not evidence of something he specifically thought at the time.

53. In cross-examination, it was put to Richard that the evidence in his witness statement that "I always believed we would be left everything when they passed" was not based on something his parents promised him. His response was that they (the three sons) were always promised "to be treated equally. Everything was equal within the family." He agreed that equality within the family meant that everything was shared equally between all five of them. He also agreed with the proposition that the partnership agreement had in fact implemented the notion of equality "between the five of us".

54. This is more important for what he did *not* say: in particular he did not say, in response to the question about his belief that the sons would be left everything, that was because his parents had in terms said so.

55. When asked directly whether he was ever told by his father that the sons would each receive an equal share from his estate when he died, he said he was not, because that was a long way off and they never talked in those terms.

56. Overall, I found Richard to be a straightforward witness, doing his best to give an honest recollection.

57. Adrian's evidence, in his witness statement, was similarly that, in addition to saying that the sons were all working for their future, his father had said that "all this will be yours one day". He also echoed Richard's evidence as to the Partnership agreement. Adrian said that this "reflected part of what had already been promised to us" and that, while it did not address what would happen on the death of their parents, he understood from the promises they had already made that their estates would ultimately come to the sons equally in return for their hard work.

58. In cross-examination, and in contrast to Richard, he made express reference to his parents having said "one day all this will be yours", and said that he took that to mean after his parents' had died, although he accepted that his parents did not speak in terms about what was in their wills or what would happen to their property after their death. He did not give specifics about when and where such assurances were made. In his witness statement, he said that he and his brothers all assumed that their father's will was in the same terms as their mother's, but that he could not "recall actually

asking Dad or his saying. We were just working and building the business; I did not give the technical details that much thought, if any." The point that his father had not said, following Brenda's death, that his will was in the same terms was a point he repeated in oral evidence.

59. Overall, I found Adrian to be a more defensive witness than Richard, with a keener sense of what answers were helpful, or not, to his case. I therefore treat his evidence as to the precise nature of the assurances made by his parents with greater caution. Nevertheless, with one exception (relating to his conduct towards his father in later years, to which I refer below), I consider that Adrian was trying to give his honest recollection.

Philip

60. Although Philip did not mention this in his witness statement, he readily accepted in cross-examination that his parents had encouraged the sons to work in the business with promises that, though the hours were long and the wages low, they were "working for their futures", and that they were "working as a family for everybody together" which he agreed could be interpreted as working for the "common good", although that was not a term he thought had been actually used. He also accepted the possibility, at least, that implicit in what his parents said was that the sons would be left to run the business after their parents had gone.

61. He also accepted that another constant refrain of his parents was that everybody was – and would continue to be – treated equally. He said that his parents made it clear that the three sons were to be treated equally in terms of income and share of the business, and that he understood this to apply to the present and to the future so long as each of them stayed working for the business.

62. His wife, Denise, who also said nothing of these assurances in her witness statement, said in cross-examination that she recalled Albert and Brenda saying that the sons were "working for their futures" and that it was their desire to treat each of them equally.

63. Philip denied in cross-examination that his parents had ever said "one day all this will be yours", or other express words to that effect, and said that they never discussed with the sons what was or would be in their wills. He did, however, accept that he assumed this would be the case.

64. When it was put to Philip that if the parents' share had been left by their wills, for example, to Richard, so that he ended up with a 60% share, he agreed that would not be equal treatment, and would be contrary to his assumption that all three sons would be treated equally, including that all would belong to the sons on an equal basis one day. He agreed that this assumption was based on the things that his parents had said to him.

65. He also agreed that Albert had said that as parents they sought to look after the sons, as the next generation, in the expectation that the sons would look after their children as the generation after them. When it was put to him that Albert had positively stated, in the presence of others in about 2015, that in the future – meaning after he had gone – the business would be left to the sons equally, he said that he assumed that was the

case, and – again – agreed that his assumption was based on those things that his parents had said.

66. In closing argument, Mr Troup KC, who appeared for Philip, acknowledged that the acceptances made by Philip in cross-examination had gone beyond that his parents merely said that the sons would be treated equally and were working for their futures, but submitted that Philip had rowed back from this in re-examination. It is true that in re-examination, Philip was asked what his parents had said about equality, up to 2001, to which he said, that it was pretty much just "you are all working for your futures". He was then asked how much his parents talked about what would happen when they died, to which he said: "it was not a conversation we had". Asked about what his father said about equality after Brenda's share had passed to the sons, he said it was again all about working for the future. He also re-confirmed that he had no recollection of the words "it will all be yours one day" being said by either of his parents.

67. These answers in re-examination are not, however, inconsistent with the acceptances made by Philip during cross-examination. It is not inconsistent for Albert and Brenda to have made promises to their sons which reasonably induced them to believe that they would each ultimately inherit from their parents an equal share – as between the three of them – of the farming business, and yet neither parent spoke expressly as to what would happen when they were gone, or what would be in their wills. To the extent that there is any inconsistency, I prefer the candid and unguarded answers given in cross-examination.

68. Philip maintained that, beyond being aware that Albert was considering changing his will in 2015, he knew nothing at the time of the changes he intended to make. In the face of clear documentary evidence to the contrary, I reject this particular evidence of Philip. The evidence to the contrary is contained, principally, in an attendance note of Mr Thorne (of Clarke Willmott) of a meeting with Albert and Philip on 6 February 2015. The note is divided into two parts, the first when Philip was also present, and the second when Philip had left the meeting. It is the latter part where Albert gave detailed instructions about his assets and the intended changes to the will. The first part of the note, however, records a clear statement by Albert that: "I want to alter my will and leave everything to Philip". It also records him making similar complaints about Richard and Adrian as he made in his subsequent meeting with Mr Thorne on 15 March 2015 (referred to above), and also repeating the wish that there be a 50/50 split of the business, which would be achieved if he left his 25% share to Philip.

69. Mr Thorne suggested that the ordering of the contents of the note might be wrong, and that Philip might not have been present during the earlier discussion. He accepted that this is not his actual recollection, however, and that he is just trying to make sense of the notes. I am in as good a position to do that and, in my judgment, the order of events as set out in the note is more consistent with Philip having been present at the critical time. In the first part – when Philip is recorded as being present – there is a more general discussion about Albert's relations with the other family members, and a simple reference to him wanting to change his will so as to leave everything to Philip. That was a comment volunteered by Albert, and not something said in response to a question from Mr Thorne about his testamentary intentions. There would have been no reason, at the point that was said, for Mr Thorne to have already sought to exclude

Philip from the room. He was excluded thereafter, however, when Mr Thorne discussed the details of Albert's will.

70. The fact that Philip was aware that Albert was changing his will to leave everything to him is supported by a handwritten note made by Philip, in Albert's note book, on the page headed "March 10 2015" and relating to his discussions with Mr Thorne about his will. Philip has added the following: "Will to be between you and me no one else." Philip accepted that this was his handwriting, but said that he had no recollection of it and did know what it referred to. When read together with Mr Thorne's attendance note of the meeting with Albert and Philip of 6 February 2015, the clear inference is that Philip was aware that Albert was changing his will to leave everything to Philip, and was keen that this be kept secret from Richard and Adrian, given that it would achieve in effect the same result that Albert had discussed with the sons (a 50/50 split of the business) which had prompted Richard to threaten legal action.

71. A number of other witnesses were called by both sides. Each of them, in my view, gave their evidence honestly. Most of them recounted what Albert or Brenda had said to them, which is only indirectly supportive of what they said directly to the sons. In some cases, their evidence was accepted without challenge. I summarise the key aspects of their evidence below.

The other witnesses called by the claimants

72. Jacqueline Winter, who was married to Adrian from 1992 to 2008, said that she had been party to many conversations with Brenda and Albert about their desire to get the business to a position "where it could support all three boys". She spoke of occasions when she was waiting for Adrian to finish work on the farm, when Brenda or Albert said that, whilst it was inconvenient to have to wait for Adrian, the boys understood that they were all "working for their futures and to build a business to look after all three and their families".

73. Paula Winter, Richard's wife, said that, in the later stages of her life, Brenda told her that everything would go to the boys when she and Albert were gone. While, for reasons I develop below, I accept that neither Albert nor Brenda was prone to talk about the actual or proposed contents of their wills, I accept Paula's evidence on this point. I consider it inherently likely that Brenda would have spoken in these terms at the point in her life where she knew she was terminally ill and did not have long left. That is supported by the fact that it reflects the contents of the wills which she and Albert had very recently made. Other than this occasion, Paula accepted in cross-examination that she did not hear Albert or Brenda refer specifically to what would happen to their property after their death, but she described this as an "undercurrent", which she understood from Brenda and Albert often saying things like "this is for the boys".

74. Daphne Puddy, a long-time friend of Albert's and Brenda's, said that she recalled Brenda telling her many times that she hoped the farm business would keep her boys together, and that she recalled conversations with Albert after Brenda's death, when he referred to the boys "working for their futures". She also said that Albert had told her that he and Brenda wanted the business to go to the boys, to share equally. Under cross-examination, however, she accepted that she had not seen the Partnership

agreement, and said that she took what was said by Albert and Brenda to mean that later in life the boys would take over the business and have an equal share. She accepted that no-one mentioned to her what would happen on the parents' death.

75. A witness statement was provided by Mark Phippen, a business associate of the Winter family, who referred to a conversation in 1985/6 with Albert when he said that his sons were working in the business, for low salaries, because they were all working for the common good, with the money made by the business being retained in it for the futures of them all. Mr Phippen's evidence was not challenged, and he was not called to be cross-examined.

76. Jeoffrey Potter, a former colleague of Albert and Brenda also gave evidence that Albert and Brenda often said that the children were "working for their futures". He also said that Brenda and Albert said that the farm would all be the sons' one day, but accepted under cross-examination that this was his interpretation of their saying that the sons were working for their future.

77. A witness statement was provided by Paul Lilycrop, an architect who worked for the Winter family. His evidence was not challenged, but it did not go further than corroborating that Albert said he wanted each son to have his own farm.

78. Another witness who provided a witness statement but was not called to be cross-examined was Paul Wyborn, who worked in his father's market garden business and in that capacity became friends with the Winter family. His evidence also did not take matters further forward, since his recollection was just of a conversation with Albert in May 2008, in which Albert commented that Team Green Growers was a "team", because it was important that he and his sons were all together in the business as equal partners.

79. Mr Anthony Porter was the accountant for the Partnership and the Company for many years. In his witness statement, he said that during his dealings with Albert, Albert was always clear that he wanted the business to grow to enable each son to have his own farm and that, until that point was reached, he wanted the business as a whole to carry on. He said that Albert was very open with him about how he wanted to build the business for all three of his sons.

80. He added to this in evidence in chief from the witness box, when he referred to something said by Albert at a board meeting, the date of which he could not remember but thought it was probably shortly after October 2014, where the sons were present. The gist of what Albert had said was that "ultimately it would all go to the boys." He also said that Albert had told him privately that he would leave everything to the boys and it would enable them each to have their own farm, at a meeting in his Taunton office on an occasion when he (Mr Porter) had been tasked with speaking to each partner about their aspirations.

81. Mr Porter is independent of the dispute between the brothers, and I do not doubt that he gave his evidence honestly, but I place little weight on his evidence as to what Albert said at a board meeting. His explanation for why it was not in his witness statement was that as he could not remember the date it was not something he should include. That is an unsatisfactory reason, particularly as his witness statement contained reference to Albert having said other things to him, without any reference to

the date on which they were said. Moreover, there is no mention of Albert having said such a thing at a board meeting in any of the sons' witness statements. The absence of any reference to it in any board meeting minute is of less relevance, as it was not a comment about Company business as such. The reference to the private meeting with Albert at his Taunton office does not necessarily present the same problems, but I nevertheless treat it with caution, given that it was only referred to for the first time in Mr Porter's oral evidence.

82. In his witness statement, Mr Porter also referred to an occasion, in around 2010, when he was discussing with Albert whether land purchased at Barton Farm should be brought into the Partnership or the Company. He says that Albert did not mind, as the ownership would be equal between the partners/shareholders. Mr Porter went on to say that Albert "re-stated" his vision that ultimately ownership would be equal between his sons. This is not corroborated by any note, and suffers from the fact that Mr Porter does not identify when that vision was first stated, for this to amount to a re-statement. In the same paragraph he refers to discussions he had with Albert in 2014, when he said that he did not want to get rid of the "boys assets". There is, however, a note of that meeting, in which Mr Porter recorded Albert as saying that: "last thing he wants to do is get rid of assets 'or the boys assets'". This is, as Troup submitted, ambiguous as to whether Albert was intending to treat all the assets as in effect belonging to the boys, or whether he meant to refer to his *or* the boys' assets. For these reasons, I do not place weight on this part of Mr Porter's witness statement.

The other witnesses called by Philip

83. Witness statements were provided by Philip's two sons, Craig and Kieran. Neither of them contain, however, any evidence relevant to the core issues in dispute. They were not called to be cross-examined.

84. A witness statement was provided by Alison Buckingham, a cousin of Philip, Richard and Adrian. She was called to be cross-examined, briefly, but there is nothing in her evidence which bears on the core issue as to what, if any, assurances were made. A witness statement was also provided by her mother (Albert's sister), admitted in evidence under a Civil Evidence Act notice, on the grounds of her infirmity. This too contains nothing which bears on the question of the assurances.

85. A witness statement was provided by Michael Welham, a friend of the Winter family, who grew up with the sons and remained close to Brenda and Albert. His evidence was not challenged. He said that so far as he was aware, no promises or assurances were made by Brenda or Albert as to the eventual ownership of the business. The fact that he did not hear such assurances carries little if any weight.

86. I also heard evidence from Mr Thorne (of Clarke Willmott). His evidence – which I accept – was that there was nothing in what Albert said or did at any time during the course of his dealings with him that suggested he had made any promise or promises to any of his sons that could have created an estoppel so as to restrict his ability to give his estate on whatever terms he chose. Mr Troup submitted that this is important, because had Albert made such promises his solicitor would have been aware of them. I disagree. Whatever assurances were made by Albert and Brenda to the sons, they were made informally and over a long period of time. It would be highly surprising if Albert was aware of the concept of proprietary estoppel, and its

essential feature that informal promises could create equitable rights where the sons relied to their detriment on the assurances. It is not surprising therefore that Albert did not raise such matters with his solicitor.

Conclusions

87. There is a considerable amount of common ground within the evidence given by Philip during cross examination and the evidence of Richard and Adrian. Having considered the evidence of each of them overall, I find that the things expressly said by Albert and Brenda to justify requiring the sons to work long hours, for low wages, and ploughing profits back into the business, included at least that they were all working as a family for everybody together, i.e. for their common good, that everything was done for the family, and that the sons were working for their future. Albert also spoke often of his vision that the business would be built up to the point that a farm could be provided for each of the sons and their families. I find also that Albert did say to Philip words to the effect that he and Brenda looked after their sons, and the sons were expected to look after the next generation.

88. I also find that a point often repeated by Albert and Brenda was that they treated, and intended to treat, all the sons equally. As Philip accepted, he understood this as referring not merely to the present, but also to the future, for which they were all working hard, and reinvesting profits.

89. On the basis of the evidence from the other witnesses called by the claimants, which mostly related to what was said *to them* as opposed to what was said directly to the sons, I find that Albert and Brenda did on a number of occasions tell others that the sons were working, and the business was being built up, for the sons' futures. The fact that such things were said to others, provides at least indirect support for the conclusion that Albert and Brenda said them directly to the boys.

90. The principal dispute between the parties lies in whether these assurances were limited, and reasonably understood as being limited, to the sons receiving the equal share – alongside both parents – in the business (i.e. initially a 1/5th share) which they acquired during their parents' lifetimes, or extended to the sons receiving an equal share also in the parents' interest in the business after they were gone, i.e. that they would each ultimately have a 1/3rd share in the business. As to the evidence, the main point of dispute is whether Albert and Brenda said words to the effect that "this will all be yours one day" to the sons, as Richard and Adrian maintain, but which Philip denies.

91. There is a secondary dispute as to whether the subject matter of the assurances was limited to the assets comprising the business (i.e. the parents' Partnership share and, so far as Albert is concerned, his shares in the Company), or whether it extended to all of the assets of the Parents. I address this point separately below at §109..

92. So far as the principal dispute is concerned, the refrain that the boys were working for their futures did not in terms distinguish between their futures as part owners of the business with their parents and their futures as owners of the whole business once their parents were gone. By working for a low wage, with profits being ploughed back into the business, each son was already working for his future, because he was working to increase the value of his share in the business. From 1988 until 2000, that

meant his share in the farming business at Bower Farm. From 2000 until 2004, that meant his share in the farming business and in the value of the land at Bower Farm (such share being increased on Brenda's death). From 2004 onwards, it meant the value of his shares in the Company and his share of the property held from time to time in the Partnership.

93. Nevertheless, on the basis of all the evidence I have read and heard, I conclude that, whether or not Albert or Brenda said in terms that everything would belong to their sons one day, that was the reasonable inference from what they said, and that this was what the sons reasonably understood them to have meant. Specifically, I conclude that Albert and Brenda did make assurances to Richard, Philip and Adrian which were reasonably understood by them to mean that if they committed to working in the family business the business and its assets would ultimately – i.e. after Albert and Brenda had gone – be divided equally among them. Each son therefore had an expectation, reasonably induced by their parents' assurances, that they could expect to receive a one-third share in the business and its assets.

94. Where informal assurances are made within a family, particularly over a very long period such as in this case, the context is very important. In my judgment, there are three aspects of the context which are critical.

95. First, there is no doubt in my view that the business that Albert and Brenda started, and which they built up over many years with the help of the sons, was always intended by them to be a <u>family</u> business, and only a family business. Brenda, in particular, was fiercely determined to see that the business was a family one in which all the sons participated. There was never any suggestion that, upon her or Albert's death, any part of the business would be transferred to anyone but the sons. Put simply, where else would the business have gone on the parents' death? If the question had been put to Albert or Brenda I have no doubt that they would have said "of course" they intended for the business to remain wholly within the family unit (that is, the three sons and their families) even after they were gone.

96. Brenda's intention to leave her share of the business to the sons in equal shares was clear from what she in fact did. There is no doubt that was also Albert's intention for many years, as revealed by his own will made in 2000, and a further will which he made in 2007 which was to the same effect, apart from including a small bequest to Diane Turner. That appears to have remained his intention until the falling out with Richard and Adrian that prompted him to make the 2015 Will. Even then, there appears to have been no question but that Albert's share would remain within the immediate family, albeit being passed to Philip alone. An intention to leave property in a will is not the same as an assurance to do so. The fact that at no stage, however, was there any contemplation by the parents of leaving the business to anyone other than their sons provides important context for what they did say over the years.

97. The desire to keep everything in the family is reflected in the fact, as Philip accepted, that Albert spoke in terms of him and Brenda looking after the next generation (meaning the three sons) and that in turn they would look after the generation that followed.

98. The second important piece of the context is that Albert and Brenda always spoke (until the breakdown which occurred in about 2015) in terms that the sons would be

treated equally in all respects. As I have noted above, Philip agreed that his parents often reiterated the importance of equality and that he understood this to relate to the present, and to the future.

99. The third important piece of the context is that Albert and Brenda said the things that they did, on many occasions at least, by way of encouragement to the sons to continue working in the business, and as justification for the long hours for relatively low remuneration, and the reinvestment, not distribution, of profits for many years.

100. Where there is an absence of formality about what parents say to their children, it is often difficult to distinguish a mere statement of intention from an assurance. Where, however, statements were made in order to encourage the children to commit to working in the family business, then it is easier in my judgment to characterise what was said as an assurance sufficient to support a proprietary estoppel.

101. The seriousness with which the assurances were made by the parents, and were intended to be acted upon, is best demonstrated by Albert's reaction on the two occasions I have referred to above when first Richard and then Adrian chose temporarily to leave the business. It was made clear to each of them that if they chose to leave, then they would be out of the family altogether and would not be entitled to any share in the family business. In Richard's case, this occurred before the relationship had been formalised in any way. In Adrian's case, it occurred after the partnership agreement had been executed (although before the beneficial interest in Bower Farm was transferred to the Partnership), but I am satisfied that none of the family appreciated at the time that there could well have been an obvious answer to Albert's threats to cut Adrian out at the time, based on the fact that Adrian already had a vested share in the Partnership.

102. Even if nothing positive had been said by Albert at the time as to the benefits to which Richard and Adrian would be entitled if they committed to coming back to the family business, the obvious corollary of the threat that they would be cut-out if they did not return is that their entitlement to a share in the family business was dependent upon them committing to work in it.

103. I have already noted that Philip accepted on a couple of occasions in cross-examination that it was his assumption that the sons would each inherit an equal share of their parents' interest in the Partnership and their father's interest in Company. I consider that his wish to keep the 2015 Will secret between him and his father (see above) reflects his understanding that Richard and Adrian at least shared that assumption.

104. Mr Troup was correct to submit that an assumption made by the sons that they would inherit everything on their parents' death is not enough to found an estoppel. There is a fine line, however, between a mere assumption, and an assumption (or belief) induced in the sons by things said to them by their parents over a long period. In my judgment, this case falls on the right side of that line so as to be sufficient foundation for an estoppel.

105. Mr Troup submitted that as Albert was an honourable man who stuck to his word, and as he felt able to change his will so as to leave everything to Philip, he could not have made the assurances I have found were made. I accept that – as recorded in his diary

(see above at §28.) – Albert believed he was free to deal with his share of the Partnership as he wished. That, however, is far from determinative, given that the binding nature of the assurances arises not because they were intended by the promisor to be binding, but as a result of detrimental reliance on them by the promisee.

106. Nor is my conclusion inconsistent with the lack of any documentary reference to the promises made (leaving aside the fact that they are consistent with each of the wills made by Albert and Brenda except the 2015 Will) or the lack of specificity in the recollections of Richard and Adrian (and other witnesses) over when or where things were said. Where the assurances are implied from the totality of things said by the parents over many years, all of which pointed in the same direction, it is not surprising that the witnesses have difficulty in pin-pointing specific assurances on specific occasions.

107. There was a consensus among the witnesses who knew them that Albert and Brenda did not talk, even among the family, about their private financial affairs. That is supported by the fact that they did not discuss at all the creation of the Partnership or the declaration of trust over Bower Farm with the sons prior to executing them, and by the fact that they did not discuss the contents of their wills with the sons. The two exceptions are, first, the reference by Albert, in the meeting with Mr Thorne in February 2015 when Philip was present, to changing his will to leave everything to Philip and, second, Brenda's comment to Paula Winter about what would happen on her death. The first of these was, however, after relationship had broken down with Richard and Adrian and, even then, he did not discuss any details when Philip was in the room. As to the second, the circumstances were exceptional.

108. This is consistent with Philip's recollection – which was largely supported by Richard and Adrian during their cross-examination – that Albert and Brenda did not talk with the sons about what was in their wills and did not discuss in terms what would happen to their property on their deaths. That does not mean, however, that when referring to the boys working hard now so as to build for their futures, they did not say something like "all this one day will be yours". Given that was indeed their long held intention, then I consider that on balance they are more likely than not to have said something to that effect at least on occasion. I do not, however, rest my conclusion on that finding: rather, as I have already indicated, I consider that even if they never said that expressly, that would have been the reasonable inference in all the circumstances from the other things I find that they did say.

<u>The subsidiary question: what property was covered by the assurances?</u>

109. Richard and Adrian contend that the assurances made to them extended to the whole of their parents' property. Neither can point to any specific promise to this effect. Richard said that he thought that when they said that "it would all be ours one day", that meant everything, as they did not differentiate between personal and business assets. Adrian said the same thing.

110. In my judgment, the evidence does not establish an assurance about the parents' personal (i.e. non-business) assets with anything like the clarity required to create a proprietary estoppel. On the basis of all the evidence which I have seen and heard I am satisfied that the focus of what was said by Albert and Brenda, and which gave

rise to the assurances I have found were made, was at all times on the farming business and assets. It was the business which was the focus of the sons "working for their futures" and it was the income from, and assets of, the business which were being referred to in the context of treating the sons equally. This is also reflected in the terms of Brenda's will, which left to the sons only her share in the Partnership, with her personal estate passing to Albert (unless he predeceased her).

111. So far as the business assets are concerned, I am satisfied that there is sufficient clarity as to the scope of the property covered. Brenda's share in the Partnership has already passed to the sons, so what remains for the purposes of the proprietary estoppel claim is Albert's share in the Partnership assets, and his shares in the Company.

Reliance

112. I treat reliance and detriment separately, at the invitation of Mr Troup who, while recognising that the elements of proprietary estoppel are not watertight compartments (see *Gillett v Holt* [2001] Ch 210, at p.225), submitted that it was important in this case to have regard also to each of the elements.

113. As Lewison LJ pointed out in *Davies v Davies* (above), there must be a sufficient link between the assurance and the conduct which constitutes reliance. The assurance does not need to be the sole inducement, however. It is sufficient that it is an inducement: see *Wayling v Jones* (1993) 69 P&CR 170, per Balcombe LJ at p.173, quoted with approval by Robert Walker LJ in *Gillett v Holt* (above), at p.226H.

114. In my judgment, reliance is clearly established in this case. It is common ground that each of Richard and Adrian did in fact devote their working lives, from before they left school until Albert's death in 2017 to working in the family business. I consider that at least *an* inducement to them doing so was the fact that assurances were made by Albert and Brenda, as I have interpreted them above.

115. That was certainly what Richard and Adrian said in their evidence but, more importantly I consider that it is inherently likely that a factor influencing their decision to continue working in the family business for relatively low pay, with all profits being reinvested in the business, was the assurances which I have found were made to them.

116. Mr Troup's principal objection to this conclusion is that Richard and Adrian would probably have acted in the same way even without the assurances as to their parents' shares in the business, because they were far better off with their 20% (or later 26.66%) share in the Partnership and 25% of the shares in the Company than they otherwise would have been.

117. The only alternative career which Richard positively contemplated was in the military. Mr Troup cited the examples of Albert's eldest brother, Jim, and of Jeoffrey Potter, as men who followed an army career without acquiring the wealth which the sons now enjoy from the shares in the business they acquired during the parents' lifetimes. When Adrian temporarily left the business, it was for work which was also unlikely to have generated such wealth.

118. I accept it is likely, had Richard chosen a career in the military, or had Adrian done the sort of other work he did when he temporarily left the family, that they would not have accumulated as much wealth as they have done by working in the family business. It is, however, impossible to know what either of them would have done, over the 40 or more years that they have in fact worked in the family business, had they chosen some other path.

119. I also accept that the assurances as to their future entitlements were not the only reason Richard chose to stay with the family business over the military, and why Adrian chose to return to the family business in 1996. I am satisfied that they were, nevertheless, an important factor in both decisions.

120. More importantly, the question of reliance is not to be answered by reference to one-off choices made by Richard and Adrian long ago, and I am satisfied that the assurances made by the parents that each son would ultimately be left with an equal share with the others in the family business was a factor that induced Richard and Adrian to continue working for the family business over such a long period.

121. I consider, in particular, that it remained a factor in the later years, when Richard and Adrian devoted a proportionately greater amount of time to the business than Philip. Had they understood that, in so doing, they were not to receive any part of Albert's share when he died, I think they would have acted differently.

Detriment

122. Mr Troup submitted that even if Richard and Adrian were induced by their parents' assurances (as I have found them) to commit to working in the family business, then they suffered no detriment because they derived substantial benefits as a result of that commitment, and those benefits outweighed any detriment suffered by them.

123. He pointed out that this is very different to a case, such as *Thorner v Major*, where the claimant worked for many years on the farm for low pay and would end up with nothing without the promised inheritance. On the contrary, as a result of committing their lives to the family business, Richard and Adrian acquired, and have retained, a share in the Partnership and shares in the Company, valued at approximately £2 million for each of them. That, he submitted, is substantially more than any detriment they suffered as a result of working very hard for most of their working lives for little reward in terms of pay. He also submitted that it was necessary to take into account (as a counterbalance to the fact that they worked for little pay) all the other benefits they received such as cheap accommodation, payment of their taxes and the like (see §23. above). Finally, he submitted that having regard to one of the core objectives of the parents – to ensure that each son had his own farm – that has in fact been achieved, because Richard and Adrian have, out of the money distributed to them so far from the Partnership, each acquired a farm.

124. These are powerful points, well made. I have concluded, however, that the element of detriment is satisfied in this case.

125. As a preliminary point, the parties were in dispute as to whether it was appropriate, at all, to take account of countervailing benefits received by Richard and Adrian when considering whether there had been sufficient detriment. Mr Sims KC, who appeared

for the claimants, contended that it was only necessary to take account of countervailing benefits in considering the appropriate form of remedy, once an estoppel had been established. Mr Troup submitted that it was necessary to weigh benefits received against detriment suffered in order to determine whether there had been sufficient detriment to found an estoppel in the first place.

126. In *Gillett v Holt* (above), at p.232D-F, Robert Walker LJ said, of the requirement to establish detriment, that "it is not a narrow or technical concept". It need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances". It is to be judged at the moment when the person who has given the assurance seeks to go back on it, and whether it is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded.

127. Mr Sims relied in particular on a passage from Robert Walker LJ's judgment at p.235 of *Gillett v Holt*, in which he criticised the judge in that case for taking a too narrowly financial view of the requirement to detriment, "…as his reference to "the balance of advantage and disadvantage" suggests". In that case, Mr Gillett spent his working life as a farm manager working for Mr Holt, who made repeated promises that Mr Gillett would succeed to his farming business, and the farmhouse in which Mr and Mrs Gillett had lived for 25 years. After many years, however, the relationship between Mr Holt and Mr Gillett broke down, and Mr Holt made lifetime dispositions to another, in whose favour (to the exclusion of Mr Gillett) he also made provision in his will. The judge found that detriment was not established, largely because Mr Gillett had not received less than a reasonable wage for his services, and taking into account ways in which Mr Holt had been generous to Mr Gillett, for example paying his son's school fees and spending money to improve the farmhouse. It was this which Robert Walker LJ criticised as a too "narrowly financial" approach to the question of detriment.

128. Mr Sims also relied on the fact that in the list of elements of the cause of action set out by Lewison LJ in *Davies v Davies* (above), the task of weighing the detriment against countervailing benefits was said to be part of the decision of how to satisfy the equity.

129. I consider that Mr Sims' approach falls into the error of over-compartmentalising the elements of the cause of action, and is inconsistent with the broad enquiry referred to in *Gillett v Holt*. Robert Walker LJ's criticism of the judge in that case was of a too narrowly *financial* view of the question of detriment: the detriment Mr Gillett suffered as a result of having committed himself to working for Mr Holt, and thus depriving himself of the opportunity of trying to better himself in other ways was not something susceptible to financial evaluation. That does not mean that in considering whether overall there was detriment, no account is to be taken of the benefits which accrued to the promisee in reliance on the assurances made.

130. So far as the passage from *Davies v Davies* is concerned, the fact that Lewison LJ referred to the balancing of detriment and countervailing benefits in the context of deciding on the appropriate remedy does not mean that it in an appropriate case it may also be relevant to the identification of detriment in the first place.

131. After the hearing, Mr Sims alerted me to a decision of Rajah J handed down since the trial (*Spencer v Spencer* [2023] EWHC 2050 (Ch)), in which he found that a proprietary estoppel was established in favour of a claimant (Michael) who had positioned his working life in significant part on the basis of assurances that he would receive the farm on which he worked. At §96, Rajah J noted that it was now impossible to unpick what he might have done differently with his life over 40 years if the assurances had not been made, and continued:

> "97. That is the answer to Ms Shea's submission that far from suffering detriment, Michael in fact enjoyed substantial benefits as a result of his hard work and commitment. He undoubtedly did. He has had rent free accommodation and the payment of most of his living expenses by the partnership. Michael's capital account as shown in the last drawn partnership accounts is over £1.4m held in mainly liquid assets. The partnership also made very substantial pension provision for Michael, leaving him with a pension fund worth £745,754.03 at John's death. To the extent that he has suffered hardship, Ms Shea says, the countervailing benefits, have eclipsed them. As Mr Jourdan says, however, where a parent promises a child a farm if they work on the farm until the parent dies, and the child does what they were asked to do, giving up the possibility of other options, and positioning their working life based on the assurances, that is likely to amount to detrimental reliance. It is not possible to put a money value on the unquantifiable detriment of committing a life to a farm and not building a different life elsewhere, nor to recreate a world without the assurances: see Habberfield [17 -18, 47 – 48], *Suggitt v Suggitt* [2011] EWHC 903 (Ch) and on appeal at [2012] EWCA Civ 1140.
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> 98. As Lord Briggs observed in *Guest* the true "value" of the detriment may be impossible to assess with any confidence and prima facie where the reliant detriment has had lifelong consequences, "a detriment valuation analysis will fall upon stony ground". That was said in the context of assessing the proportionality of the remedy to the detriment, for the purposes of satisfying the equity. That seems to me to be an issue which is inextricably linked to the issue of assessing whether detriment has been suffered at all having regard to the countervailing benefits. There are no watertight compartments in proprietary estoppel."

132. I agree, as Mr Troup submitted, that this supports the conclusion that balancing the detriment against countervailing benefits can be considered as part of the question whether any detriment was suffered at all, as much as in deciding upon the appropriate remedy. That view is reinforced by *Gladstone v White* [2023] EWHC 329 (Ch) (to which Mr Troup referred me, in response to *Spencer* case having been brought to my attention). In that case, at §494-§496, Trower J rejected the contention that the claimant had suffered detriment (in the context of a claim based on proprietary estoppel) principally because any detriment she suffered had been outweighed by countervailing advantages.

133. The *Spencer* case also reinforces, however, a point relied on by Mr Sims, that it is not possible to put a money value on the unquantifiable detriment of committing an entire

working life to a family business, giving up the chance to build an alternative life elsewhere, and that such commitment is likely to constitute detrimental reliance. I agree that the lifetime commitment by Richard and Adrian to working on the farm is not capable of being quantified. It is true that the *benefits* received by them are largely capable of being quantified – by reference to the value of the distributions made, and still to be made, following the sale of the farming assets and the winding-down of the Partnership and the Company. But it is still not possible to conduct a meaningful comparison in financial terms with the *detriment* suffered by them.

134. Both parties sought to rely on the result in the *Spencer* case. Comparison with the result in other cases, based on their own particular facts, is rarely helpful. As Mr Troup pointed out, while there are some similarities between *Spencer* and this case, there are also material differences.

135. Notwithstanding the simple attraction of the proposition that the claimants' actions in committing their working lives to the family business cannot be described as a detriment in view of the substantial financial benefits they have received by so doing, I think that it is in the end an overly-simplistic analysis.

136. This is best explained by reference to the underlying question: would it be unconscionable in all the circumstances for Albert to renege, in 2015, on the assurances I found had been made by him and Brenda over many years. In my judgment it would, and what makes it so is the *continuing* commitment by Richard and Adrian for a long time even after they had already acquired their interest in the Partnership and shares in the Company. Had it been made clear throughout that they could not rely on ultimately receiving an equal one-third share in the business, but that their parents were free to transfer their (combined) 40% share to outsiders or to Philip alone, then Richard and Adrian would have had options open to them, among which would have been the option of taking their existing share in the Partnership and developing it in some other way. It is no answer to this to say that they may not have appreciated that they had such an option (as appears to be the case with Adrian when he temporarily left the business in the mid 1990s), because the issue was never forced. Had it been, the existence of that option would have become clear.

Unconscionable?

137. I have already considered the concept of unconscionability as part of the analysis of detriment. As there explained, and stepping back from the detail, I consider that it would be unconscionable for Albert's estate to renege on the assurances that were made to Richard and Adrian, and upon which they relied by devoting their lives to the family farming business.

138. Mr Troup submitted, however, that it would not be unconscionable to do so now, in light of fundamental changes in the circumstances which could not have been foreseen when the Partnership was set up in 1988.

139. First, he pointed to the fact that the Partnership had become dysfunctional in about 2014/2015. That is true, as I have summarised above. By that time, however, there had been the best part of 40 years reliance by the sons on the parents' assurances. During that time, the business had grown substantially, to a large extent because the sons had accepted low wages and all profits had been reinvested. It remained

unconscionable for Albert to go back on the assurances notwithstanding that the sons were incapable of continuing to work together.

140. The same answer applies to Mr Troup's second and third points: that the farm business has been wound up, and that the assets have been, or are in the course of being, distributed for a value far above that which could have been contemplated in 1986, so that the claimants are now wealthy as a result. I will return to these points in connection with the appropriate remedy, but I do not think that the fact either that the business has ceased, or that the assets are worth more than originally contemplated, removes the element of unconscionability which arises as a consequence of the claimants having devoted their working lives for the very purpose of building up the business so that it was valuable and could be shared between the three sons.

141. Mr Troup also relied on certain aspects of Adrian's conduct, on which I heard evidence from various witnesses.

142. Diane Turner referred to two occasions when Albert told her that he had been physically abused by Adrian. One of these was after he had a pacemaker fitted, and Albert told her that Adrian had punched him in the chest. There is a record of one of these occasions in Albert's handwritten notes, when he referred to Adrian having punched him in the chest "strait [sic] into my pace maker". Mr Thorne gave evidence of an occasion when Albert came to his office wearing a sling, and said that Adrian had knocked him down. Denise, Philip's wife, also referred to an occasion when Albert told her that he had got into a heated discussion with Adrian, who had pushed him in the chest. Finally, Rosemary Walker (whose evidence was admitted as hearsay due to her infirmity) referred to an occasion when Albert told her he had been punched in the chest by Adrian, after he had his pacemaker fitted. Albert himself referred in his handwritten notebook to an incident when Adrian punched him in the chest.

143. I accept the truthfulness of this evidence, corroborated as it is by each of the witnesses, in the sense that I accept that each of Diane Turner, Mr Thorne, Denise and Rosemary Walker were told these things by Albert. Albert's own belief that he had been attacked by Adrian is reflected in the note he made. While these incidents appear to have taken place after relations between Albert and Adrian were strained, I can see no reason why Albert would have made them up, either in writing his note or telling others about it.

144. I bear in mind that Albert had seriously fallen out with Adrian, at the time these incidents were said to have occurred. I also bear in mind the real possibility that Albert exaggerated the violence of Adrian's conduct. Nevertheless, despite Adrian's denial that he was at all violent towards his father, and while accepting it is likely that Adrian did not characterise his conduct in this way, I conclude that he was rough enough with Albert, on one or two occasions, for Albert to feel that he had been pushed about or punched in the chest.

145. I do not conclude, however, that these isolated instances of rough behaviour towards his father are sufficient to outweigh the effect of nearly 40 years of commitments to the family business by Adrian, as described above. I do not accept, therefore, that the element of unconscionability is removed by reason of Adrian's conduct. Even if I am

wrong in that regard, it can have no bearing on the decision to deprive Richard of the one-third share of which he had been assured.

The appropriate remedy

146. Adopting the starting point suggested by Lord Briggs in *Guest*, the appropriate remedy in a case where assurances were made, and acted on, over a period of some 40 years, is to give full effect to the assurances.

147. Mr Troup's essential contention is that the claimants have received sufficient value from the realisation of their existing shares in the Partnership and the Company to satisfy the equity, so that no further remedy should be awarded. In practice that achieves the same result as denying an estoppel from arising because there has been no detrimental reliance as a result of the cumulative countervailing benefits which the claimants have received.

148. I do not accept that contention. If, as I have found, the assurances were reasonably understood as extending to the parents' own share of the business, and the claimants relied to their detriment by committing their working lives to the business in the expectation that they would receive a one-third share of their parents' interest, then I consider that the appropriate remedy is to grant them that one-third share. If, contrary to what has in fact happened, the sons had received nothing by way of partnership share during their parents' lifetime, then I do not think it would have been appropriate to depart from the starting point, of honouring the assurances in full, by awarding them less than the one-third share of which they had been assured. It should not make a difference in my view, at the remedy stage, that they are already in possession of a 26.66% (or thereabouts) share in the business.

149. A variation on this contention is that no further remedy is appropriate because the claimants have received a windfall – arising from the increase in value of Bower Farm – which was not within the contemplation of any of the family when the business was started. As I have already indicated, however, it is clear that the development potential of Bower Farm was identified as long ago as the mid 1980s. There is no evidence as to the value which any of the family expected to achieve, if the development potential of the land could be unlocked. Even if, however, the value realised is much greater than that which was envisaged, I do not think that is a reason to deny the claimants the full one-third share in the business which was promised them.

Contractual estoppel

150. A final point advanced by Mr Troup is that the claimants' case is barred by contractual estoppel by virtue of their entry into the Partnership agreement in 1988, and their subscription to the articles of association of the Company. He referred in particular to the option, in clause 13 of the Partnership agreement (to which I refer in more detail below) for continuing partners to buy the share of an outgoing partner, and relied on *Horsford v Horsford* [2020] EWHC 584 (Ch). In that case, a farm was held in partnership between M, her husband and her son, P. A partnership agreement provided an option to a continuing partner to buy-out the share of an outgoing partner. M retired from the partnership, and P served a notice exercising the option to purchase. M brought proceedings to recover the price of her share payable by P. P

contended that he already had an equity which he acquired by way of proprietary estoppel which prevented M from enforcing her rights under the partnership agreement, arising from assurances by M that P would inherit her partnership share, on which he acted to his detriment.

151. The judge, Murray Rosen QC sitting as a deputy High Court Judge, rejected the estoppel claim, on the basis that no sufficient assurances, reliance or detriment had been established. He also found that P was in any event contractually estopped from asserting an equity, by reason of the fact that he entered into the partnership agreement which contained an option to purchase, which he had in fact exercised. He said, at §158: "a right to apply to the court for a discretionary remedy that might or might not include a transfer of any remaining interest on the part of [M] is completely inconsistent both with the terms of the [partnership agreement] and with [P]'s exercise of his option to acquire her interest on her retirement."

152. There are important differences between that case and this. First, the option agreement was entered into late in the day, after any equitable entitlement would have arisen from reliance on assurances made, and P had already built up substantial wealth as a result of his participation in the partnership. Second, P had exercised the option, so that he was now the owner of the relevant land over which he claimed an equity by virtue of proprietary estoppel. Third, the partnership agreement contained an entire agreement clause which excluded any other agreement. It is true that the judge said (at §165) that even without the entire agreement clause, the position would be the same. That was because, however, "when a person has rights in respect of property, and then enters into a contract which is inconsistent with the continued existence of those rights, the person is estopped from asserting those rights" (emphasis added). That describes a circumstance not present in this case. Here the Partnership agreement was entered into very early on, before the many years of detrimental reliance by the sons, and thus before the equity on which they rely was established.

153. In my judgment, there is no inconsistency in this case between the fact that the Partnership agreement contained an option entitling the continuing partners to buy out the share of a deceased partner, and the claimants having relied on assurances as to what would happen to their parents' share on their death. Moreover, as I have already indicated earlier in this judgment, I do not think that Albert or any of the sons paid attention to the detailed terms of the Partnership agreement (as evidenced by Albert's apparent belief that he could deprive Adrian of his partnership share if he refused to continue working in the family business). The existence of the option did not prevent Brenda's partnership share passing to the sons under her will, in a manner consistent with the assurances which I have found were made.

Mutual Wills

154. In view of my conclusion in the estoppel claim, it is unnecessary to consider the alternative claim based on mutual wills, or the claim relating to the exercise of the option. I consider both briefly, however, in case the matter goes further.

155. Where one testator makes a binding agreement with another testator that both will make their wills in a particular form (which may, but does not have to be, the same) and that they would not revoke them or (depending on the terms of their agreement) change them without giving the other the opportunity to do the same, then upon the

death of the first to die, the survivor is bound by a constructive trust to give effect to their agreement: see, for example, *Legg v Burton* [2017] EWHC 2088 (Ch); [2017] 4 WLR 186, per HHJ Matthews at §19; Theobold on Wills, 19th ed., §1-018.

156. The requisite agreement may be found by making inferences from the circumstances (*Fry v Densham-Smith* [2010] EWCA Civ 1410, at §33), but the mere fact that two testators have made wills in the same form provides no basis for inferring an agreement that the second to die is irrevocably bound not to alter their will after the death of the first to die. It is not uncommon, for example, for spouses to make wills in the same terms, following agreement that they would do so. It is far less common, however, for them to have agreed that the arrangement could not be revoked by the survivor of them to die, irrespective of how long the survivor were to live after the death of the first, or of any changes in their circumstances thereafter.

157. The starting point in this case is the accepted fact (notwithstanding that Albert's 2000 will has not been found) that Albert and Brenda made wills in the same terms in 2001. It may readily be inferred that this was as a consequence of them having agreed with each other that they should do so. Such an agreement may also be inferred from the assurances which each of them gave to their sons, in the terms I have found above. It does not follow from this, however, that they had agreed that the survivor of them would be unable to revoke their will. There is a material difference between, on the one hand, parents being in agreement as to the division of their estate between their children on their death, and making implicit assurances to their children over a long period to that effect and, on the other hand, the parents agreeing between themselves that the survivor could not in any circumstances change their will.

158. There is no direct evidence of any such agreement. There is no documentary evidence at all, and no evidence of any discussion either Albert or Brenda had with anyone as to their testamentary intentions, apart from the fact that Brenda talked to Paula Winter, shortly before her death, about her and Albert's wish that the business would be passed to the boys. As I have already noted, even though that probably reflected an agreement with Albert, such an agreement does not go far enough. Since Albert and Brenda were not prone to talk about their financial affairs with anyone else, the absence of such evidence is not surprising. It necessarily means the burden of proof on those asserting mutual wills is harder to discharge.

159. There is also nothing to support the mutual wills case in Clarke Willmott's files. Mr Thorne said that his standard practice was to explain to his clients, where both spouses were drafting wills, that they must appreciate that circumstances can change over time and they may wish for the surviving spouse to retain flexibility to adjust to their circumstance as life develops. If clients wished to execute mutually binding wills then that was their prerogative, but it was his practice to advise them of the consequences, followed up in writing, and to include a preamble to the wills clearly stating that they were intended to be mutually binding. Brenda's will contains no such preamble, and there is no record in Clarke Willmott's files of the possibility of mutual wills being raised, or of the advice that Mr Thorne would typically give if it had been. Mr Thorner accepted in cross-examination that he had not asked Albert and Brenda whether they intended to make mutual wills, but said that was because there was nothing in the circumstances which suggested that might have been their intention. That is not determinative, because it is possible that Albert and Brenda made such an agreement with each other without discussing it with their lawyer.

Nevertheless, the absence of anything in Clarke Willmott's files clearly does not assist Richard and Adrian in discharging the burden of proof.

160. The very fact that Albert felt able to change his will without compunction points away from him having agreed with Brenda that his will could not be revoked after her death. The fact, as Mr Troup submitted in a different context, that Albert was a loyal person who felt bound to honour his promises, while it does not detract from the case on proprietary estoppel (the essential feature of which is the detrimental reliance by those to whom assurances were made), does, in my view, count against the case on mutual wills, the essential feature of which is the agreement between the testators that the survivor's will cannot be changed.

161. Overall, in my judgment, the evidence in this case does not get near to satisfying the burden of establishing an agreement between Albert and Brenda that each of their wills would be irrevocable if they survived the other.

Option to Purchase

162. Clause 13 of the Partnership agreement provides that in the event of the retirement, expulsion or death of a partner during the continuance of the partnership, the "other Partners" have the option, to be exercised within three months of the relevant event, to "purchase in their existing partnership capital share proportions" the share of the outgoing or deceased partner. The option is to be exercised by giving notice in writing of the desire to exercise it to the outgoing partner or to the Personal Representatives of the deceased partner.

163. Following Albert's death, Richard and Adrian wrote, through their solicitor, to Philip's solicitor, copying in Mr Thorne, purporting to exercise the option to purchase Albert's share.

164. Mr Troup's principal submission is that the notice from Richard and Adrian was ineffective, because clause 13 on its true construction requires notice to be given by *all* the remaining partners.

165. The option is given by Clause 13(a) to "the other Partners", which may either mean all or any one or more of the other partners. Mr Sims pointed to the fact that clause 13(d) refers to the "Partner" (singular) exercising the option, to support his submission that the option may be exercised by fewer than all the remaining partners.

166. In my judgment, however, on the true construction of clause 13, the option is only exercisable by all the remaining partners together.

167. Clause 13(d) provides for the purchase to relate back to, in this case, the date of death, and the reference to "the Partner exercising the Option" is in terms that such partner shall be "exclusively liable for the Partnership debts and liabilities whether incurred or arising before or after [the date of death]". That makes sense only if the "partner" exercising the option means all the other partners: to make one of three remaining partners liable for all the partnership debts merely because he exercised an option to buy the share of a deceased partner who held a 20% share would be irrational.

168. Moreover, the requirement that the purchase is to be made by the other partners "in their existing partnership capital share proportions" also makes sense only if the intention is that the option is exercisable by *all* the other partners together.

169. Finally, if the option could be exercised by only one or other of the remaining partners, then that gives rise to the obvious possibility that two or more of the remaining partners might separately wish to exercise it in their favour. The absence of any mechanism in the Partnership agreement to deal with that eventuality suggests that it was not envisaged to arise, which also points towards the conclusion that the only purchase contemplated was by all the remaining partners, in their existing partnership capital share proportions.

170. For these reasons, which reflect Mr Troup's submissions, I conclude that the purported exercise of the option by Richard and Adrian was ineffective.

171. Mr Troup had a number of other points against the effectiveness of the option notice, which I need address only briefly.

172. He suggested that clause 13 has no application because the Partnership was not continuing either after Brenda's death or after the transfer of the business to the Company. I do not accept this submission. While Brenda's death automatically dissolved the Partnership, Albert and the sons continued the business thereafter on the basis of a partnership in the same terms. Partnership accounts were prepared, and provided to each of the partners, each year thereafter. I consider that is clear evidence of an acceptance by the continuing partners that they were continuing on the same terms as the original partnership. That acceptance continued long after 2004, when the business (but not the properties) were transferred to the Company.

173. In support of his submission that the Partnership ceased upon the transfer of the business to the Company Mr Troup cited *Chahal v Mahal* [2005] EWCA Civ 898. That was a case, however, where the whole of the assets and business of the partnership were transferred to a company. In those circumstances, said the Court of Appeal, the natural conclusion was that the partnership had been dissolved, since it was to be inferred from the parties' conduct in transferring all assets and operations of the partnership to a company that they had agreed that the partnership would come to an end by mutual agreement. That is not the case here, where only the business was transferred to the Company – for the purpose of taking advantage of limited liability following an insurance claim as a result of an accident – but where the Partnership continued to own the properties from which the business was operated, and indeed purchased more property for that purpose.

174. Mr Troup also submitted that the option notice was ineffective because merely copying in Mr Thorne, a partner in Clarke Willmott, was insufficient to give notice to Clarke Willmott Trust Corporation Ltd, one of the personal representatives. In response to the suggestion from the claimants that Mr Thorne was in fact a director of the Trust Corporation, I was not provided with any details of its directors at the relevant time. In any event, I find it inherently likely that Clarke Willmott, the solicitors, would have made Clarke Willmott Trust Corporation Ltd aware of the fact that the notice had been given.

Conclusion

175. For the above reasons, I find that the assurances given by Albert and Brenda throughout their lives were sufficient to give rise to proprietary estoppel in favour of Richard and Adrian. The estoppel relates to Albert's (and Brenda's) interest in the assets and business of the Partnership and, from 2004, Albert's shares in the Company, but not to their personal estate. It entitles each of the sons to a beneficial interest in a one-third share of those assets.

176. Accordingly, Albert's share of the Partnership business and assets and his shares in the Company are to be divided equally between Richard, Philip and Adrian.

177. I reject, however, the contention that Albert and Brenda made mutual wills. I also find that the notice purporting to exercise the option under clause 13 of the Partnership agreement was ineffective.