Neutral Citation Number: [2024] EWHC 1581 (Ch)

Case No: BL-2022-BRS-000027

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

2 Redcliff Street
Bristol BS1 6GR

Date: Monday 1st July 2024

Before:

HHJ RUSSEN KC

(Sitting as a Judge of the High Court)

- -

Between :

MATTHEW HALSTEAD COBDEN	**Claimant**
- and -	
DANIEL HALSTEAD COBDEN	**Defendant**

- -
- -

Stephen Jourdan KC and Ciara Fairley (instructed by **Ebery Williams**) for the **Claimant**
James Pearce-Smith (instructed by **Stephens Scown LLP**) for the **Defendant**

Hearing dates: 13th to 17th May 2024
Supplemental written submissions dated 10 June (Claimant) 13 June (Defendant) and 17 June 2024 (Claimant)
Draft judgment circulated to the parties on 20 June 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 1 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ Russen KC:

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A. INTRODUCTION

The subject matter of this judgment

1. This is my judgment following a trial in a partnership dispute. It addresses the evidence and submissions made at the trial and the supplemental submissions made by the parties in the light of the decision of the Court of Appeal in *Bahia v Sidhu* [2024] EWCA Civ 605, which was handed down on 3 June 2024 and therefore after the conclusion of the trial.

2. The judgment concerns the question as to what should happen to the equal shares of the two partners in a partnership which has been dissolved. Specifically, the issue to be determined is whether or not the court should make a *Syers* order (see *Syers v Syers* (1876) 1 App Cas 174 addressed in paragraphs 112 to 116 below) in place of a full winding-up of the Partnership which would see its assets sold on the open market (each partner being free to bid for them) and, if so, which partner should be permitted to buy out the other under the terms of that order.

Distilling that issue from the pleaded cases

3. This litigation between two brothers (referred to throughout the case and also in this judgment as **Matthew** and **Daniel** respectively) concerns the farming partnership known as Witcombe Farm Partnership ("**the Partnership**"). The Partnership operated the business of a dairy farm ("**the Farm**") and that business has been carried on by the brothers pending the court's decision as to how the assets of the now dissolved Partnership and their rights in those assets are to be dealt with.

4. The Partnership was dissolved by Matthew's service of a notice of dissolution dated 25 August 2022. The next day Matthew issued his claim in the Chancery Division, London, seeking a declaration that the Partnership had been dissolved (alternatively that the court should dissolve it on the "just and equitable" ground). Matthew's Claim Form also seeks a declaration that:

> "… [Daniel] having decided to cease being in partnership with [Matthew]
>
> (a) it is a term of the Partnership, either express or implied, or
>
> (b) [Matthew] has the benefit of an equity
>
> whereby [Daniel] is required to sell his interest in the Partnership, together with his interest in both The Old Dairy, Witcombe Farmhouse, Ash, Martock and Cobden Investments Limited to [Matthew] at a fair value."

5. Those claims were supported by Particulars of Claim which referred to a constructive conversation between the brothers in October 2021 involving Daniel saying 'yes' to the suggestion that Matthew should buy him out of the Partnership, so that Daniel could leave the Farm, set up a new farming business with his son Charlie and be his own boss. The background to that, Matthew said, was an understanding, reached between them in 2005 in the period leading up to the point where their brother Willy left the farming business, in 2006, that one day Matthew would buy out Daniel from the Partnership. It was alleged that, since 2006, Matthew had, in effect, run the Farm as a sole trader with Daniel's tacit support; and that Matthew has been the driver in the Partnership's business, planning its substantial expansion (from December 2013 onwards as explained in Section B below) and liaising with all the professionals involved in that expansion.

6. The Particulars of Claim referred to Matthew having obtained a formal valuation in the light of the October 2021 conversation and then, in April 2022, making an offer to buy Daniel's share in the Partnership (and his shares in other property on the Farm and a company associated with the business) for £3m. In mid-July 2022, through his solicitors, Daniel rejected that offer and then, on 15 August 2022, said Daniel wished to buy out Matthew. A counter-offer of £3.852m was made. That offer was open for acceptance for 14 days, the alternative being said to be a formal dissolution of the Partnership. By that stage Daniel's position was that his relationship with Matthew had irretrievably broken down and that it was not possible for the Partnership to continue. Matthew alleged that in May 2022 Daniel had contacted the Partnership's bank with a view to freezing its bank account and, since August 2022, had caused

Matthew and his wife Hayley Cobden (**Hayley**, who works in the office on bookkeeping and administration) not to be paid by the Partnership. Matthew dissolved the Partnership one week after Daniel's counter-offer.

7. By his order dated 5 September 2022 Deputy Master Scher transferred the proceedings to the Business & Property Courts in Bristol.

8. Daniel then served his Defence. In addition to stating that the Particulars of Claim were an abuse of process (including by reference to the lack of necessary particulars to support the alleged agreement, or equity, for Matthew's buy-out claim) the Defence denied that there had been any agreement between the brothers, let alone any enforceable contract, to justify Matthew's claim to be entitled to buy out Daniel, or that Matthew had an equity to support that claim. It stated that unless the court was prepared to make an order that Daniel should buy out Matthew (at a price to be agreed or otherwise determined by the court) the Partnership should be fully wound up.

9. On 17 February 2023 Matthew served Amended Particulars of Claim ("**the APOC**") which referred to the important initial conversation, relied upon by Matthew as setting the basis on which the two brothers went forward following their brother Willy's departure from the Farm, as "**the 2005/2006 Conversation**". The APOC dated this to around the time that Willy left the Farm and emphasised that the basis of it was Daniel's indication that his involvement in the Partnership was "time-limited". At the end of that time, Matthew would have to buy him out. The APOC alleges that the brothers have also spoken about that on three or four occasions since the significant expansion of the business which began in 2013.

10. The APOC introduced (or perhaps identified more clearly) the claim that, not only is it fair and just that Daniel should be ordered to sell his Partnership share to Matthew, but also that Matthew was entitled to such an order through a proprietary estoppel. This was the 'equity' mentioned in the Claim Form. The basis of it, in summary, was that at all times since the 2005/2006 Conversation, reinforced by the later ones, Matthew has invested all his time and resources in building up the Partnership business in the reasonable belief, encouraged by Daniel, that Daniel would leave the business at some point and Matthew would buy him out.

11. Daniel's Amended Defence and Counterclaim denies the 2005/2006 Conversation took place or that Daniel ever said to Matthew that his own involvement in the Partnership was time limited. The subsequent conversations along the same lines, alleged by Matthew, are also denied. Instead, the Defence said the brothers occasionally had rows which involved Matthew threatening to dissolve the Partnership, Daniel challenging him to call in the auctioneers and (his bluff having been called) Matthew backing down. Daniel also challenges the detrimental reliance alleged by Matthew. He says that he has spent more time than Matthew working for the Partnership and that he has managed its day-to-day business with little involvement of Matthew.

12. As was the case with the much shorter original Defence, which indicated an application to strike out the Matthew's original pleading was being prepared, the Amended Defence did not engage with the more recent developments relied upon by Matthew. The October 2021 conversation was not admitted and its relevance was denied. Daniel obviously admits that in 2022 each brother had made an offer to buy

out the other but Daniel did not plead to the other exchanges or events of that year, relied upon by Matthew in the APOC, on the basis that they were of no relevance to the issues raised on the claim.

13. The APOC also refers to a number of allegations of negligence on the part of Daniel who, Mathew says, has been guilty of costly mistakes. Only one of them was particularised in that Matthew alleges that (the purchase of wheat for the Partnership's dairy herd being Daniel's responsibility) Daniel failed to forward-buy all of the wheat for the cattle for 2022 which meant that the Partnership was forced to buy the forage at an additional cost of around £104,000.

14. The parties agreed in advance of the pre-trial review on 8 April 2024 that the claims in negligence did not fall to be determined by the court at the forthcoming trial. Daniel agreed with Matthew's position that all such claims would need to be dealt with subsequently as part of the accounts and inquiries. At the Pre-Trial Review, Ms Fairley on behalf of Matthew said he was in the process of preparing further particulars of the alleged negligence and loss and that they would be served in due course. Accordingly, the order made at the PTR made it clear that those allegations would not be determined at the trial.

15. However, consideration of the deferment of any trial of the negligence allegations caused the court and the parties to focus at the PTR upon the separate allegations of breach of fiduciary duty made by each brother against the other (as set out at paragraphs 63 of the APOC and paragraph 71 of the Amended Defence & Counterclaim). These remained to be determined (in relation to liability though not quantum) at the trial.

16. Matthew had alleged that Daniel breached his duty of good faith by alerting his wife Georgina Parris ("**Georgina**", who uses her maiden name) and/or his parents-in-law to the possibility of acquiring neighbouring Bearley Farm ("**Bearley Farm**"), which in turn led to its purchase by members of the Parris family in 2022. However, although Matthew does not accept the account given by Daniel in his witness statement about the circumstances preceding that purchase, he now recognises that discussions between Daniel and his wife and her family did not lead directly to it. By the start of the trial, therefore, that allegation of breach of fiduciary duty pleaded at paragraph 63 of the APOC was no longer being pursued.

17. Daniel's competing allegations of breach of fiduciary duty were that Matthew breached his fiduciary duty by terminating the Partnership's contracting business (i.e. the business of contracting out its machinery and operators for other farmers) in 2022 and also by refusing to agree that the Partnership should rent land from Georgina for growing feed crops. However, at the start of the fourth day of the trial, Mr Pearce-Smith indicated that Daniel was no longer pursuing these allegations of breach of fiduciary duty pleaded in paragraph 71 of the Counterclaim.

18. The pleaded allegations of breach of fiduciary duty had been potentially relevant to the question of the appropriate post-dissolution remedy, though the order at the PTR made it clear that the court would not be expected at this trial to make any determination on loss and damage if liability was established. Matthew's position was that this remained the position, so far as concerned the court's consideration of the wider circumstances surrounding the 2022 purchase of Bearley Farm, even though

the related breach of duty claim against Daniel was no longer pursued. He maintains that what happened in relation to that purchase is nevertheless still relevant to explaining the breakdown in the relationship.

19. Subject to that last point, this brief summary of the comprehensive statements of case explains how it is that the subject matter of this judgment is as identified in paragraph 2 above.

B. FACTUAL BACKGROUND

20. The witness statements explaining the history of the dispute and (in the case of those made by Matthew and Daniel) explaining the brothers' respective positions are also comprehensive.

21. Some of the matters summarised in this section of the judgment were disputed (or certainly not admitted) before Daniel gave evidence. However, in the light of his evidence, the following is I believe an uncontroversial summary. What is not included within it is any reference to the disputed 2005/2006 Conversation which Matthew relies upon as providing the initial momentum for his claim that he is entitled to buy out Daniel's interest in the Partnership. Nor do I mention the conversation which Daniel said took place later in which he mentioned the possibility of having to move his family home to Taunton.

22. The Partnership is the successor business to a dairy farming partnership established by the parties' parents, Richard and Gill Cobden, in 1972. The farming business is based at Witcombe Farm, Ash, Martock, Somerset ("**the Farm**").

23. In 1998 the parents made a gift of the farming assets comprising just under 335 acres, farm buildings, a farm worker's bungalow known as Westover and the milk quota registered in the name of the old partnership (but not Witcombe Farmhouse which they continued jointly to own and occupy) to Matthew, Daniel and their third son William (known as **Willy**). The parents retired from the farming business at that time.

24. Richard Cobden died quite recently, in February 2022. Mrs Gill Cobden still lives in Witcombe Farmhouse, the main farmhouse on the Farm, which is now owned equally by Matthew and Daniel (outside the Partnership).

25. Matthew is the eldest son (born in 1970), Willy is the middle son (born in 1971) and Daniel (born in 1973) is the youngest.

26. Between 1998 and 2006 the three sons carried on the business as partners in equal shares without any written partnership agreement.

27. For much of that period the farming was done by Willy as Matthew and Daniel were employed, alongside their father Richard, in the family's substantial abattoir business based in Langport, Somerset.

28. The abattoir business was operated from the early 1970's by Cobden Investments Limited ("**CIL**"). CIL is now owned 75% by Gill Cobden (having inherited her late husband's shareholding), 12.5% by Matthew and 12.5% by Daniel. Later, CIL went

into a joint venture, for the operation of the abattoir business, with Romford Meats Limited ("**Romford Meats**") through a third company, Southern County Fresh Foods Limited ("**SCFF**"). Matthew was a director of SCFF and he and Hayley lived at their home in Langport until he returned to the Farm.

29. Matthew and Daniel returned to the Farm in the early 2000's and therefore for the last few years of the partnership between the three brothers. They each built their homes at the Farm by converting existing barns. Oaklease House became the home for Matthew and Hayley. The Old Dairy became the home for Daniel and Georgina (though Georgina would spend some nights each week at her family's farm near Taunton). At that time Willy was living in Westover, the farm worker's bungalow. Matthew did much of his own building work on the conversion of Oaklease House which appears to have taken longer than the conversion of The Old Dairy. Oaklease House was owned by his parents and is now solely owned by Mrs Gill Cobden. The Old Dairy is now owned equally by Matthew and Daniel but, like Witcombe Farmhouse, is an asset outside the Partnership.

30. Daniel and Georgina married in 2004 and their son Charlie was born in 2005.

31. Matthew and Hayley married in 2005. Their daughter Rose was born in 2006 and their son Toby in 2009.

32. Willy left the brothers' partnership in 2006 when Matthew and Daniel bought him out. [There is an issue on the pleadings as to whether this involved Willy retiring or, the partnership between the three of them being a partnership at will, there was a dissolution of their partnership, but nothing turns on that. Daniel had alleged that Matthew bullied Willy into bring that partnership to an end.] The two brothers carried on the Partnership in equal shares, again without any formal partnership agreement. Therefore it was and remained until it was dissolved in August 2022 a partnership at will.

33. In June 2010 Witcombe Farmhouse was transferred by the parents to Matthew and Daniel and registered in their joint names, though not as an asset of the Partnership.

34. CIL disposed of its interest in the abattoir business in August 2011 upon the conclusion of a long-running legal dispute with Romford Meats which began in 2006. This involved litigation in the Companies Court over the affairs of SCCF which eventually to led to CIL being bought out of the abattoir business by Romford Meats.

35. In 2011 the Partnership engaged the services of Mike Bray, a farm management consultant at Kite Consulting.

36. In late 2013 the Partnership began building a new dairy unit ("**the Dairy Unit**") on the Farm. Construction of the Dairy Unit was supposed to be completed in November 2014 but the project over-ran, both in terms of time and budget. The Dairy Unit became operational in the Spring of 2015.

37. The construction of the Dairy Unit was financed in large party using a loan of £4.65m advanced to the Partnership by HSBC. HSBC also lent a further £1.7m for the Partnership to repay its existing indebtedness to NatWest. In order to reduce the debt to HSBC Richard Cobden invested a significant sum (credited to Matthew and Daniel

as partners) from the monies received by him as a result of the buy-out of CIL by Romford Meats. Matthew also invested some of the 'success fee' which it had been agreed he would receive from CIL as a reward for him driving the litigation with Romford Meats. Further finance for the Dairy Unit came in the form of a £700,000 Regional Economic Grant.

38. The Dairy Unit extends to over 200,000 square feet and contains a 72 point rotary milking parlour and associated facilities. This means that the business does not adopt the traditional approach of milking twice a day. Instead, the cows are maintained on a very high-quality diet and they are milked three times a day under a high welfare, high input and high output North American style of system. The Partnership sells its milk output to Saputo. This currently produces a monthly milk payment of about £500,000.

39. With the Dairy Unit, the Partnership now operates a large-scale and technically advanced dairy farm. The APOC says that the Partnership's cows each produce approximately 40 litres of milk per day, compared with a national average of about 27 litres. This is attributed to its 'state of the art' technology.

40. Mr Townsend, the expert instructed to value the land and buildings of the Farm, said the Dairy Unit is one of the largest in the country and one of perhaps a dozen or so of its type in the whole of the UK. Mr Bray said there are very few dairy operations in the UK which are in any way similar, either in size or output of milk.

41. The building of the Dairy Unit has resulted in the Partnership expanding its milking from some 300 cows to the present number of around a thousand. The other expert evidence before the court, based upon an inspection of livestock on 29 April 2024, confirmed that there were then 995 dairy cattle, 192 beef cattle and 2 bulls on the Farm. That number of cattle requires a lot of grass and fodder. The Partnership has added to the acreage of 1998 so that it now owns 549.34 acres (approximately 222 hectares). It also rents additional land.

42. The milking herd is not an asset of the Partnership. The dairy herd is owned by Cobden Farms Limited ("**CFL**") which leases the herd back to the Partnership. CFL acquired the herd (then 816 cows) from the Partnership in 2015. CFL is the wholly owned subsidiary of CIL (in which, as explained, Mrs Gill Cobden is a 75% shareholder). Under the leasing agreement, which is terminable on 6 months' notice, all calves belong to the Partnership but they can be sold to CFL.

43. In recent years the Partnership has been highly profitable. To illustrate, in 2021 it made a profit of £565,309 on a turnover of almost £4.9m; in 2022 a profit of £619,434 on a turnover of over £6.5m; and in 2023 a profit of £838,420 on a turnover of over £7.5m (each of those an accounting year ended 30 September). Almost all of the Partnership turnover is referable to its milk output. In the five years ending in 2002 (before it was terminated) the Partnership's contracting business accounted for no more than 1% of turnover and, overall when averaged out, significantly less than that.

44. However, the Partnership has not always been financially buoyant, even after the construction of the Dairy Unit. In the years it was being constructed the Partnership made a loss: £125,608 in 2014 (following a loss of £236,494 in the preceding year) and £79,486 in 2015. Milk prices collapsed, falling to below 20p per litre, at around

the time the Dairy Unit became operational in 2015. In July 2016, its loans from the bank stood at £6,292,800 and £533,520 respectively. In 2016, the Partnership made a loss of £32,735.

45. In February 2019, HSBC referred the Partnership's loan account to the bank's UK Business Banking Loan Management Unit, also known as 'Special Care'. This was the result of the Partnership struggling to manage its indebtedness to the bank. In Special Care the Partnership was able to agree an extension of the loan term which saw its monthly repayments reduce from around £50,000 to around £27,000.

46. Although the Partnership had, at the time the Dairy Unit became operational, a milk supply contract with a price floor built into it, the purchaser, Pattemores, terminated the contract at short notice because of the availability of cheaper milk from other suppliers. At a mediation in June 2019 Pattemores agreed to pay the Partnership around £440,000 plus its legal costs. By that time the Partnership had entered into a milk supply contract with Dairy Crest which soon thereafter changed its name to Saputo. The Farm is Saputo's largest supplier, providing around 4% of its overall milk supply, and their only supplier which directly loads the lorry tankers rather than from a tank at the farm.

47. In January 2020, the Cobden family sold some development land at Coat Road, Martock. This produced a substantial profit for the family.

48. The Partnership came out of Special Care with the bank in September 2020. HSBC also approved a project to increase the size of the herd to 1900 cows. This involved another shed at the Dairy Unit for a further 500 cows, building a maize pit, increasing the size of the slurry lagoon and extending the dry cow shed. The project was to be funded through a further bank loan of £2.43m and Richard Cobden committing £664,000 which represented his share of the Coat Road sale proceeds. In the event, the expansion was put on hold because of an issue with Saputo (whose commitment to take the extra milk from the additional cows was key) about the minimum butterfat content that would be required.

49. In the Spring of 2021 Bearley Farm, owned by Sidney and Mary Walters, came on the market. Matthew and Daniel discussed buying it. The brothers visited Bearley Farm for a viewing on 18 June 2021. They began working with Mike Bray on a business plan based on the Partnership buying it. However, towards the end of June 2021 Daniel told Matthew that he did not want to buy Bearley Farm or to make any further investments with him.

50. Matthew was very disappointed about this and angry with Daniel. Matthew already felt there was cause for complaint about Daniel's decision-making on farming matters within his areas of responsibility (which Matthew had intended should be the subject matter of a later trial given what he says was the costliness of them) and this event caused Matthew to realise that the time had come to buy out Daniel from the Partnership. It was common ground between the brothers that the relationship between them had deteriorated by the end of 2021.

51. In October 2021 a discussion took place about Matthew buying out Daniel. Daniel does not dispute that Matthew suggested that he would buy him out. However, whereas Matthew's says that Daniel said "yes" to the idea, and looked relieved as if a

weight had been lifted from his shoulders, Daniel disputed any such agreement in principle. His evidence (which on this point I assess in Section D below) was that he did not regard the suggestion as one to be taken seriously because Matthew would not be able to fund a buy-out.

52. In December 2021, with Matthew's encouragement, HSBC instructed Savills to produce a valuation of the Farm. Savills produced their valuation for the bank (of the Farm and the residential properties) on 19 January 2022. It was prepared by Michael Townsend, the valuer (of the Farm's land and buildings) later instructed as a single joint expert in this case.

53. Richard Cobden died on 3 February 2022.

54. In March 2022 Daniel told Matthew that Bearley Farm had been bought by his in-laws and another party.

55. Included within Bearley Farm were four fields comprising some 56 acres known as "**Lot 2**". On 1 March 2022 the Kibbear Farm Partnership, which is a partnership comprising five members of the Parris family including Georgina, agreed to buy Lot 2 (together with its entitlement to subsidy payments under the Basic Payment Scheme) for £750,000. The Form TP1 Transfer dated 29 March 2022 stated that the transferees were Georgina and her father Peter Parris and that they were to hold Lot 2 on trust for the Kibbear Farm Partnership. The remainder of Bearley Farm was purchased in March 2022 by Georgina's brother Richard Parris and his business partner Nick Heal for £6m.

56. Matthew was stunned and further angered by the news that, the Partnership having missed the opportunity to acquire Bearley Farm, it had been taken by Daniel's wife and her family. Together with the other matters which Matthew regarded as causes for complaint about the costliness for the Partnership of Daniel's decision-making, it caused Matthew to realise that the time had come to make Daniel an offer for his share in the Partnership.

57. Matthew and Mike Bray then began working on a figures for a buyout proposal which they could present to the bank with a view to Matthew making an offer to Daniel.

58. Matthew and Mr Bray met Paul Blundell, the Partnership's relationship manager at HSBC, on 6 April 2022 and Matthew told Mr Blundell that he wanted to buy Daniel's share of the business and to offer £3m. He asked Mr Blundell whether the bank would in principle be prepared to lend him the money. Mr Blundell said in principle he would support an application for a £3m loan if Matthew reached an agreement with Daniel.

59. On the same day, 6 April 2022, Matthew made a verbal offer to purchase Daniel's share in the Partnership, his interest in Witcombe Farmhouse and The Old Dairy (Daniel's home which is also owned jointly by the brothers) and Daniel's shareholding in CIL for £3 million. Matthew says this was in response to Daniel saying in the Autumn of 2021 that he invited such an offer. The offer was made by reference to the valuation report of Savills dated 19 January 2022.

60. On 11 April 2022 Daniel and Georgina met Mike Butler ("**Mr Butler**") a chartered accountant and adviser to the Parris family, to discuss the value of Daniel's share in the Partnership. I address this meeting in Section F below in my assessment of Daniel's and Mr Butler's evidence.

61. On 16 April 2022 Matthew wrote to the farms to whom the Partnership had (through Daniel) provided contracting services. It stated:

> "Witcombe Farm Partners will no longer be contract silaging. We need to concentrate on making our own forages.
>
> I would have sent this letter last October but Daniel had wanted to be in a position to carry on this work himself. That is now not the position."

62. In late April 2022 Daniel telephoned Mr Blundell at HSBC to say that he wanted to be involved in the financial control of the Partnership's banking affairs. Until then Hayley had been responsible for the day-to-day conduct of the Partnership's internet banking. This telephone call was the first intimation Mr Blundell had that the brothers were in dispute.

63. Mr Blundell informed Daniel that a more sophisticated and costly banking system was available, called HSBCnet. That system would require the brothers' joint authority to sign off on any payment out of the Partnership bank account. When Matthew learned of Daniel's call to the bank, he told Mr Blundell that he did not wish to change to that system. In another call to Mr Blundell, Daniel enquired about freezing the bank account. Mr Blundell informed Daniel that the consequence of it being frozen would be that the Partnership could neither make or receive payments, so that the Farm could not trade.

64. The upshot of these communications with the bank was that the bank decided to withdraw the Partnership's existing internet banking facility and to revert to a cheque-based system. This required cheques to be signed by both Matthew and Daniel under the Partnership's joint mandate.

65. Daniel did not go back to Matthew on his £3m offer and communications between the brothers ceased. The last direct conversation between Matthew and Daniel about farming matters was on 29 April 2022 when Matthew telephoned Daniel to ask him to stop the forager because the grass coming into the silage pit was too wet.

66. By the summer of 2022 it was clear that relations between the two brothers had broken down to the extent that it was obvious that the Partnership could not continue over the long term. Daniel's solicitors said as much in a meeting on 30 June 2022 and in an email dated 15 August 2022. The meeting on 30 June 2022 was between the parties, their lawyers and Mr Butler, and took place with a view to agreeing upon terms for a parting of the ways, but no agreement was reached.

67. By the time of the later email Daniel's position was that he wished to buy out Matthew. In the email of 15 August 2022 he made a counter-offer (in relation to the same assets covered by Matthew's April 2022 offer) to buy out Matthew for £3,852,500. It was a term of the offer that Matthew and his family would have to leave Oaklease House (which is owned by Gill Cobden) within 6 months. A deadline

of 14 days was set for acceptance of the offer, failing which the Partnership would be dissolved.

68. It was Matthew who in fact served the notice of dissolution on 25 August 2022. He issued these proceedings the next day.

69. He and Daniel have continued to carry on the business of the Partnership, in dissolution, concurrently with the litigation.

70. One particular problem, of neither side's making, that has arisen during the period of post-dissolution trading was addressed in Matthew's most recent witness statement made in January 2024. He explained that in every year since the Dairy Unit became operational the Farm has had an issue with TB in the herd. Before the autumn of 2023 this has meant that there has been a 'breakdown' in the Spring, as a result of one or more reactions in the cattle tested (or an inconclusive result in two subsequent tests undertaken 60 days' apart), which has cleared by the following October. This has meant that the breakdown has cleared before youngstock have to be housed for the winter. However, in October 2023 nine cattle reacted to the TB test. This means that the Farm remains closed in the sense of being unable to sell or move animals off it unless for slaughter. Matthew also explained it might mean DEFRA insist upon a GAMMA test which, he says, produces a lot of false positives but could mean the loss of 30% of the herd for derisory compensation. He said that such a loss could set the business back 10 years. He explained that he successfully resisted a GAMMA test in 2002 and believes he saved the business £½m.

71. The brothers have carried on the business of the former Partnership without any formal agreement between them. I infer that they have understandably been anxious to avoid the costs of a receiver and manager of the business being appointed pending trial and judgment, though I note that it is likely that two separate applications to the court (one by each of them and both decided by me) for interim relief in connection with payments to be made out the Partnership bank account of which they are joint signatories were the consequence of them choosing to carry on as if they were still in partnership.

72. Matthew has indicated that he will make an application, to be heard at the handing down of this judgment, for his appointment as receiver and manager of the business pending his purchase under the *Syers* order which he hopes to secure. This judgment obviously does not address an application not yet made. In response, Daniel has indicated that he will oppose the appointment of a receiver and manager, on the ground that there is no case for one, but he also says that any such appointment should be of a neutral third party.

C. THE RIVAL CASES

Matthew

73. Matthew's case is that, at around the time that Willy left the partnership business in 2006, the important 2005/2006 Conversation took place. He says that Daniel then made it clear that in due course he would be leaving the Partnership and, when he did,

Matthew would need to buy him out. This was the basis on which Matthew proceeded thereafter. Matthew says that initial conversation was reinforced by other conversations over the years.

74. Matthew therefore says that the understanding, from the beginning of the Partnership, was therefore that he was building the dairy business on the basis that ultimately, at some point in the future, he and Daniel would go their separate ways and that it would be Matthew who would own the business, buying out Daniel at a fair price. On that basis, Matthew devoted himself to building the business, investing his own time and money, and negotiating bank loans and investment money to expand the business. He claims the credit for building the business of the Partnership that the parties are now arguing about and says that this was also done with the prospect of his children, Rose and Toby, succeeding to the business in mind. Matthew says if it had not been for his efforts the business would have remained a very modest dairy business. He says he has an emotional attachment to the dairy business which Daniel does not have. Daniel's main interest, and that of Daniel's son Charlie, lies in farm machinery and cultivation.

75. The APOC alleges that between Willy's retirement from the business in 2006 and 2015 Matthew effectively ran the Partnership business as a sole trader, with Daniel's tacit support.

76. Matthew says it was his idea to build the Dairy Unit which has turned the business into one of large scale, high welfare and high output dairy. He says he researched the idea and arranged the funding for it. This included arranging finance with HSBC, persuading their father Richard to invest in it (using proceeds from the litigation with Romford Meats) and securing a £700,000 Regional Economic Grant. He says he has been responsible for subsequently running the Dairy Unit and that Daniel has not contributed to that in any meaningful way.

77. The relationship between the brothers has broken down, and it is agreed that they must go their separate ways. Although he served the notice of dissolution, Matthew says the relationship had broken down well before then. It would be unconscionable for Daniel to insist on a market sale of the Partnership assets, rather than allowing Matthew to buy Daniel's share at a fair price, which is the effect of the *Syers* order he seeks. Even if a proprietary estoppel is not established, that is the order the court should make on the basis it is the fair and just result. Matthew says the court should do so for the same reasons as underpin the alleged equity but also because Daniel will be able to establish the kind of business that interests him, using the proceeds under a *Syers* order, whereas the reverse is not true for Matthew.

78. In addition to the positive reasons for making a *Syers* order in favour of himself as purchaser, Matthew points to a number of financial disadvantages of sale of the Partnership assets on the open market. These include not just the expenses of a sale but also a likely substantial charge to income tax on the difference between the sale price of the livestock, deadstock and plant and machinery over their respective acquisition costs (in the case of the plant and machinery, as written down as a consequence of claims to capital allowances). If a third party purchaser were to bring his own dairy herd then the cattle owed by CIL (in which Mrs Gill Cobden has a majority shareholding) would have to be sold off in a fire sale over a short space of time at a substantially depressed price. Indeed, the herd is under TB restrictions

which, unless lifted prior to any such sale, would mean that any animals not wanted by the purchaser would have to be sold off for meat, which would be disastrous.

79. Matthew's witness statement for trial made it clear (in explaining his approach to a potential settlement of the dispute) that he opposes a sale of the Partnership's assets and is only prepared to proceed on the basis that he buys out Daniel from the Partnership. That remains his position even if Daniel (with the financial backing of the Parris family) decided to make an offer which was (or produced for Matthew) a sum significantly in excess of the true value of his interest in the Partnership. That is because, as his witness statement expressed it, *"[m]y own parents gave me the opportunity to farm. I want to do the same for my children*."

80. Matthew relies upon the verbal offer of £3m which he made to Daniel for Daniel's Partnership share and also his interest in the other assets of Witcombe Farmhouse, The Old Dairy and CIL. However, he recognises that in these proceedings he cannot force a sale of Daniel's interests in those non-partnership assets and this is reflected in the draft *Syers* order produced by Mr Jourdan KC and Ms Fairley in support of their skeleton argument for trial.

81. In light of the expert evidence upon the value of the Farm's land and buildings, given at the trial by Mr Townsend of Savills which I address below, Mr Jourdan KC and Ms Fairley made it clear in their closing submissions that Matthew was also prepared to include within his price under the *Syers* order (i) a further 5% for the value of the land and buildings to reflect the 'tolerance' within Mr Townsend's valuation; and (ii) an uplift to reflect what Mr Townsend said was the average percentage increase in Somerset farmland values since he made his report. Indeed, in their written submissions in reply on *Bahia v Sidhu* they recognised, whilst maintaining that the additional 5% was sufficient, that it would be open to the court to add to the valuation figure the tolerance of 15% which Mr Townsend had included (in reflection of his firm's standard practice for loan security valuations) in the valuation that Savills' prepared for the bank in January 2022.

82. Counsel also confirmed that Matthew would relinquish the existing and proposed claims in negligence against Daniel if the *Syers* order was made. If made, and the cross-allegations of breach of fiduciary duty having been abandoned, the order should therefore bring finality in the litigation arising out of the dissolution of the Partnership.

Daniel

83. Daniel's position is that the court should make the 'normal' order on a dissolution, with the assets of the Partnership being sold on the open market and each party being permitted to bid for them. It is clear that Daniel, armed with what Mr Pearce-Smith on his behalf described as his access to greater financial resources, through Georgina, is confident of winning any battle of the bids. Daniel's Defence says that Matthew's attempt to establish some form of entitlement to buy him out is "*not based in reality*".

84. Matthew's claim based on a proprietary estoppel is disputed by Daniel on the following grounds:

(a) the 2005/2006 Conversation did not take place;

(b) any "assurance" is insufficiently clear to found a proprietary estoppel;

(c) Matthew's reliance on the suggested assurance is disputed;

(d) if there was any such reliance, it was unreasonable;

(e) Matthew has not suffered any detriment, financial or otherwise; and

(f) the result which Daniel contends for is not unconscionable.

85. In connection with the third and last of those grounds, and disputing Matthew's claim that a *Syers* order in his favour would be the fair result, Daniel challenges Matthew's assertion that he (Matthew) is the more capable farmer. Daniel's case is that, contrary to the impression given by the APOC, it is he, not Matthew, who has run the farm. He says his commitment to the Partnership matches if not exceeds his brother's. He says he has worked far longer hours for the Partnership than Matthew. He also says that their respective financial contributions to the partnership have been almost equal.

86. Daniel does not dispute that the Dairy Unit was Matthew's idea but its establishment was the action and responsibility of the Partnership and could not have been done without Daniel's support. That included him including him being equally liable for the HSBC loan and his home at The Old Dairy (owned jointly by him and Matthew) as well as the Partnership's assets being charged to the bank. He says that the establishment of the Dairy Unit is not a reason for making a *Syers* order. This is particularly so when Daniel says that the Dairy Unit represents a slice of negative equity for the Partnership when its build cost of approximately £5.75m is taken into account.

87. More generally, Daniel says that Matthew's contention that the decision to expand the Partnership's business, and his resulting commitment to that business, reflected Daniel's acceptance that Matthew's children would continue the line of the Cobden family's succession to the farming business is both absurd and a fiction.

88. Daniel contends that if, nevertheless, the court is minded to make a *Syers* order then it should be on the basis that Matthew is ordered to sell his Partnership share to Daniel. Daniel says this is because he is able to offer more of a price to Matthew than Matthew is able to offer in return. Daniel also says that, whichever party proves to be the buyer under any *Syers* order the court is persuaded to make, then it should not be at a price determined by valuation evidence but instead through a competitive bidding process between the parties. This would ensure that the sale is upon terms which most closely resemble the terms on which the assets would have realised, had they been sold on the open market.

89. That last point was one which began to surface at the Pre-Trial Review on 8 April 2024. Going into that hearing, Daniel's position was that the valuation evidence obtained by the parties was out of date. Mr Pearce-Smith also said this in his Note for the PTR:

> "The Defendant believes that the Savills valuation was too low. Strictly speaking, therefore, the valuation evidence is not agreed. However, no purpose will be served by challenging the valuation at the trial in May when it is no more than

out-of-date background information. Accordingly, he does not require either valuation expert to attend the trial in May to give oral evidence, nor does he object to the Claimant seeking to rely upon the valuation evidence at trial. But his position will be that the court should not make a finding as to the value of the assets, whether as at August 2023 or any other date."

90. That submission at the PTR (particularly the first three sentences) caused me to be a little surprised and to question the purpose behind the court's earlier order at the Case Management Conference in May 2023 that evidence from single joint experts in the fields of (i) real estate valuation and (ii) the valuation of livestock and deadstock (including farm machinery and vehicles) should be obtained. The parties had engaged with that direction through their joint instruction of the experts. No application to call any of the experts to give evidence at the trial had been made by either party before the PTR as envisaged by the earlier order. Although I recognised that it would be open to Mr Pearce-Smith to argue that the court should not act upon the valuation evidence (albeit by legal argument upon the principles governing winding up and *Syers* orders rather than because the expert evidence was "*not agreed*") it seemed to me that his submission about the content of that evidence was such that the court needed to have before it the best up-to-date valuation evidence, if only to avoid the apparent risk that all the time, effort and cost put into their existing reports might be said to have been wasted.

91. Accordingly, I acceded to Daniel's informal application at the PTR that Mr Townsend of Savills, the real estate valuer, should attend trial for cross-examination by both parties (the cross-examination on behalf of Daniel to be followed, if so advised, by that on behalf of Matthew). I also directed that the livestock and deadstock valuers (respectively Ms Sally Mitchell and Mr Tom Mellor of Greenslade Taylor Hunt) should provide a short supplementary report addressing any change in value since their valuation as at 15 August 2023. Their supplementary report was to be based upon a valuation as close to the date of trial as practically possible.

Observations on the Rival Cases

92. Matthew's case, therefore, is that he should be the purchaser under a *Syers* order and that the court has before it reliable expert valuation evidence which (subject to the need to prepare "The Syers Dissolution Accounts" in relation to profits and losses and the partners' respective capital accounts down to the date of 20 May 2024, as suggested in counsel's draft order) enables it to conclude that Daniel's financial interest in the Partnership is properly reflected in the purchase price.

93. The terms that Matthew now offers Daniel on his leaving do not of course reflect a contention that, as the only 'successor' to the Farm the court should recognise, he should either be favoured with or can somehow bring about a low price for Daniel's share. He is willing to pay Daniel a price, based upon the market value of the Partnership assets, which the expert valuers consider they might attract if offered to outside purchasers. I have already explained that, in his counsel's closing submissions, Matthew made it clear that he was prepared to add to Mr Townsend's valuation the 5% tolerance for which the expert valuer had allowed and recognised the court might add more.

94. Daniel's primary case against that is that the Partnership's assets should be sold on the open market with each brother being free to bid. Daniel's alternative case is that a *Syers* order should be made in his favour.

95. As I indicated in my observations at the PTR, Daniel's position that the valuation evidence might not reflect the true value of the Partnership's assets, is one which on his *alternative* case, if the valuation is too low, does not work to his (purely) financial advantage. And both on that case and on his primary case he appears to gain nothing financially by himself outbidding Matthew for the Farm if the result is that he has paid a price which is not only in excess of that offered by Matthew but also in excess of what the market would pay. The effect of that would be that he has paid over the odds in preserving his own share and in acquiring Matthew's share.

96. For example, if, at auction, either Matthew or Daniel were to pay £75,000 for a tractor worth only £50,000 in the eyes of the wider market (the other bidders having dropped out of the bidding at that level) then he, as the "successful" bidder, has not gained financially. The other brother will have done so, by £12,500. In purely financial terms (I emphasise again) there is nothing to be gained by one of the partners buying the Partnership assets at a price fixed above what they would be worth to the market. Of course, Matthew does not want to part with his interest the tractor, to anyone or at any price, even if he would otherwise benefit from that £12,500 windfall from Daniel.

97. I make these points because, although Daniel would obviously be free to try to buy the Farm at whatever price he feels he can afford if a *Syers* order is not made in favour of Matthew, the real financial incentive behind him challenging the valuation evidence for dissolution purposes (i.e. the account between the partners) must lie in the prospect that either *Matthew or a third party* purchaser would, if the Farm was put on the market, pay a price higher than that indicated by the valuation evidence. In other words, that (even allowing for the costs of sale) he would receive more through a sale on the open market than he would under the order proposed by Matthew. Only that result secures a financial gain for him and avoids any concern that, under a *Syers* order, Matthew might have acquired his (Daniel's) share too cheaply.

98. Of course, each brother says there is more to their case than just purely financial considerations. If either of them should be given the opportunity to buy out the other on terms which are *potentially* financially advantageous to him, compared with the outcome for the other under a sale on the open market, then the justification for that must be some 'equity' which carries with it that potential advantage.

99. Daniel's pleaded case, backed by his confidence that he can outbid Matthew even if that might take him into the financially unattractive territory of paying in excess of what the market would pay, is that he has an expectation equal if not greater than Matthew's own of being able to carry on at the Farm.

100. Matthew's case, on the other hand, is that his own expectation of doing so is such as to lock out the idea of a sale of the Farm to anyone but himself. He repeatedly said in his testimony "*I am not for sale*" by reference to his commitment to the Farm and his personal (not just financial) commitment to what has been created with the Dairy Unit.

101. As I suggested to counsel at the trial, the competing claims to a *Syers* order are akin to each brother saying that (although the Partnership has of course now been dissolved) the other should 'retire'. Retirement (or expulsion) of either partner, on any terms, was as a matter of legal entitlement never a way forward in this unwritten partnership at will (when the 'retirement' of a partner from a partnership at will, as it is described in the heading to section 26 of the Partnership Act 1890, essentially addresses an event which dissolves the partnership). However, the competing claims do amount to saying that non-financial considerations, based upon their respective input into the Partnership over almost 20 years and quite distinct from the financial rewards its business has so far produced, justify a right of pre-emption to acquire its assets at a fair price. The effect is that the successful purchaser becomes the sole proprietor of the Farm, taking on the benefits and risks of utilising them with a view to future profit.

102. Daniel did not formulate a *Syers* order in support of his own alternative case. However, in broad terms, the *potential* value of the 'equity' asserted by each brother on their competing *Syers* claims can be said to be difference (if any) between (1) the value of one half of the Partnership's net assets as indicated by the expert valuation evidence before the court and (2) the value of that half in the continuing ownership of the sole successor to the business. Of course, if either party establishes his case for being the purchaser under a *Syers* order then the actual value of the equity will never be known.

103. So far as the first of those values is concerned, it is possible that there might be some significant variance between the expert evidence as to the market value of the Partnership's assets and what (taking account of the costs of sale) they would realise on a sale in the open market; though the parties' joint engagement with the process of adducing that expert evidence as to market value is obviously at odds with any *assumption* of any significant variance. If the valuers have valued too low, then the value of the purchaser's equity will have increased. If too high, then it will diminish, possibly to the point where, by paying over the odds, it is a 'negative equity'.

104. So far as the second of those values is concerned, that reflects the successor's ability thereafter to deploy the present Partnership assets to generate a hoped-for net profit for himself in continuing the dairy business. The size of any such profit will obviously be impacted upon by the cost of servicing any additional borrowing required by the successor to buy out the other's half share (assuming his purchase is not funded by entirely free cash).

105. I make these general observations upon the rival cases in order to emphasise that basic point: that this case has never been just about money. Indeed, allowing for the fact that he is prepared to pay Daniel what he believes to be a fair price for Daniel's financial interest in the Partnership, for Matthew it is not really about money (i.e. financial gain within the dissolution accounting process) at all.

106. It is important to highlight this point, and the existence of competing claims to an equity of uncertain and unquantifiable monetary value, in the light of the potential impact of the Court of Appeal's judgment in *Bahia v Sidhu* which was handed down after the trial concluded. For the reasons given in Section E below, that case was all about the partners' respective financial entitlement on dissolution in circumstances where the claim to a *Syers* order (one in fact made primarily by reference to one

partner's indebtedness to the partnership, at dissolution, rather than his entitlement) did not involve any recognition by the court of an underlying 'equity' to support one being made. That said, it has become necessary for me to consider whether the impact of the decision is such that, in essence, there is not much of a space for such an equity in this area of partnership law.

107. I also make those observations in the light of submissions made on Daniel's behalf at trial which bear upon both of the values identified in paragraph 102 above. The arguments went to one particular aspect of the valuation evidence and the suggestion that, if Matthew was to acquire Daniel's share under the proposed *Syers* order, he would be acquiring the profitable Farm too cheaply. The argument is, on my understanding and assessment of it, essentially one about the need for any element of enterprise value and/or goodwill in the Partnership business (assuming the latter exists and has a realisable value) to be reflected in any valuation of Daniel's share. Goodwill as a tangible and realisable asset is mentioned in the recent decision in *Bahia v Sidhu* (and in other authorities) and I return to this aspect in Section E below.

108. At this stage, on this point relating to true financial entitlement, I simply note that there is a question mark over whether the first of the values mentioned in paragraph 102 above should properly include any value above and beyond the value of the Farm's assets. So much is obvious from the fact that the point did not emerge in the course of the parties' joint engagement with the expert valuation evidence. I also return to this point when addressing the evidence of Mr Townsend in Section F and in my conclusions on that evidence in Section G.

D. <u>ISSUES FOR TRIAL</u>

109. The parties' respective cases and the deferment of other issues (as reflected in the order made at the PTR) resulted in the following as issues for determination at the trial:

(1) Is Matthew entitled to a proprietary estoppel equity which should be satisfied by making a *Syers* order that Matthew is given the opportunity to buy Daniel's share?

(2) If not, should the Court make such an order in the exercise of its discretion?

(3) If not, should the Court make an order for sale or alternatively a *Syers* order that Daniel be given an opportunity to buy Matthew's share?

(4) If a *Syers* order is made, what valuation date should be used and what directions to give effect to the order should be given?

(5) If an open market sale is ordered, what directions for the conduct of the sale should be made?

110. Although the existence or otherwise of a proprietary estoppel forms the first issue, by their closing submissions Mr Jourdan KC and Ms Fairley were not pressing the existence of a clearly defined 'equity' in Matthews's favour as forcefully as the wider argument that the overall justice and fairness of the case required a *Syers* order to be made in his favour. Mr Jourdan said it was "*sufficient to describe this as a*

proprietary estoppel-ish case". In other words, the emphasis was upon the second of the issues identified above. For the reasons explained in the second part of Section E below, I consider that to be a sensible approach.

111. I should at this point in my judgment record my gratitude to counsel (supported by the considerable efforts of their instructing solicitors) for the efficiency with which they addressed these issues though their cross examination of the witnesses and for their clear and helpful submissions made both at the trial and subsequently.

E. LEGAL PRINCIPLES

Syers orders

The Basis of the Jurisdiction

112. As explained at the beginning of this judgment, the name of this order comes from the decision of the House of Lords in *Syers v Syers* (1876) 1 App Cas 174.

113. At the time of that decision the Partnership Act 1890 ("**the 1890 Act**") had yet to be enacted and the law of partnership was regulated by the rules of common law and equity which, to the extent they are not inconsistent with the statute, are recognised still by section 46 of the 1890 Act. The statute which was in fact under consideration by the House in *Syers v Syers* was the Law of Partnership Act 1865 (28 & 29 Vict. c. 86, Bovill's Act) which was passed to remove a presumption of partnership in a number of specific cases, including that now recognised in section 2(3)(d) of the 1890 Act addressing contracts of loan.

114. The decision in *Syers v Syers* was that there was a partnership between the parties rather than a contract of loan. The plaintiff was therefore entitled to a one eighth share of the profits and the net value of the assets of the business. The partnership had been dissolved when the answer was filed in the proceedings by the defendant, his brother. The House ordered that the plaintiff was entitled to one eighth of the profits up to that date; that an inquiry be made as to what sum would have represented the defendant's share of the net value of the assets on the assumption they had been sold on that date; that the plaintiff would then be allowed a time (to be fixed by the judge in chambers) for payment of those sums with interest at 5% from that date; and that if payment was not made by that date the assets were to be sold.

115. The effect of that order was, therefore, that the plaintiff was given an opportunity to buy the defendant's share of the partnership assets at a price equal to his share of what they would have sold for in the open market on the date of dissolution of the partnership.

116. Lord Cairns, with whom the other Lords agreed, explained why that order was appropriate. He said, at pp.183-4:

> "… on dissolving a partnership of this kind the ordinary course would be for the Court to direct a sale of the assets, and, if necessary, a sale of the concern as a going concern, and to give liberty for proposals to be made by either party to purchase it before the Judge in Chambers. My Lords, those provisions are

> moulded in every case by the Court to meet the circumstances of the particular case; and it appears to me that, looking at the nature of this business, and looking at the very small interest which was taken in it by the Respondent, it would certainly not be desirable in this case to have a sale, or to bring these premises to the hammer for the purpose of ascertaining what sum ought to be given for them. It is a case, therefore, in which, if a decree for a dissolution had been made in the first instance, I apprehend that the Court would have thought it right to authorize the owner of seven-eighths of the concern to lay proposals for a purchase before the Judge in Chambers."

117. A *Syers* order therefore provides for a different method of administering (or, to use the language of the statutory provisions addressed next, "applying") the partnership assets than would result from them being converted into proceeds of sale. The purchaser under such an order must take on the firm's third party debts and liabilities and, subject to any appropriate adjustments in respect of the partners' loan and capital accounts, pay the seller a price which is designed to reflect what his share in those proceeds would otherwise have been.

118. The "*ordinary course*" of a sale of the partnership assets on a winding up of its affairs following an event of dissolution, mentioned by Lord Cairns, is one which is now recognised by the provisions of the 1890 Act.

119. Section 39 of the 1890 Act provides:

> "On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm."

120. Of course, the usual way that partnership debts and liabilities are satisfied is by realising the sale proceeds of the partnership property (as defined by section 20 of the 1890 Act) and then discharging those debts. It follows that the same process of turning the firm's assets into money is usually one by which the proportionate share of each of the former partners in any residue comes to be determined.

121. Again, using language of how the assets of the firm are to be "*applied*", section 44 of the 1890 Act makes provision, in the absence of contrary agreement, for the settling of the post-dissolution accounts. Section 44(b) states how the partnership assets shall be applied in what might be described as a 'waterfall' of distribution which ends with any residue being divided between the partners in the same proportion as they shared the partnership profits.

122. However, the language of sections 39 and 44 does not expressly mandate the sale the firm's property and it is clear from the authorities addressed below, and which post-date the 1890 Act, that the court may instead make a *Syers* order. The most recent of them is the decision of the Court of Appeal in *Bahia v Sidhu* [2024] EWCA Civ 605,

given on 3 June 2024, on which the parties provided supplemental written submissions after the conclusion of the trial.

123. Although the court's judgment in *Bahia v Sidhu* begins with a reference to the partner being "*entitled*" to his proportionate share of the "*realised*" value of the net assets of the dissolved partnership, the judgment of Lady Justice Andrews, at [6], [26]-[28] and [44]-[46], expressly recognises that there may be cases where the entitlement should be satisfied otherwise than out of their proceeds from a sale on the open market. As she noted, there is no absolute rule that the assets should be sold even though that is "*the normal practice*" and usually the best means of establishing what, financially, each partner should get out of the former partnership.

124. There being no doubt that the court has a discretion to make a *Syers* order in place of directing the sale of the partnership assets, the question arises as to when it might do so. In *Bahia v Sidhu*, at [45]-[46], Andrews LJ gave some examples of the types of case in which a *Syers* order might be appropriate. I set out my understanding of the principles governing the exercise of the discretion at the conclusion of this section of my judgment addressing *Syers* orders after considering the effect of the Court of Appeal's decision.

Other first Instance Decisions (including an introduction to Bahia v Sidhu in the Court of Appeal) and Lindley & Banks on Partnership

125. On behalf of Daniel, Mr Pearce-Smith emphasised the "*very small interest*" (a one-eighth) which the defendant in *Syers v Syers* had in the partnership. That indeed is the basis of the first of the examples given in *Bahia v Sidhu*, at [44]. I note that the court made reference to the customers of the business alongside the interests of the majority partner(s) when considering the prejudice that would result from the business being wound up rather than the minority partner being bought out of it.

126. Mr Pearce-Smith submitted that *Syers* orders are rarely made in practice and drew my attention to an observation in *Lindley & Banks on Partnership*, (21st ed), that there are no recent reported decisions of *Syers* orders being made other than *Mullins v Laughton* [2002] EWHC 2761 (Ch); [2003] 2 WLR 1006.

127. In that case Neuberger J made an order for the dissolution of an insolvency practitioners' partnership from which the claimant had been wrongly ousted. The facts leading to his departure were such that the defendants were found to be in repudiatory breach of their written partnership agreement, which breach the claimant had accepted, so his departure was not regulated by the retirement provisions of that agreement but instead such as to provide grounds for the partnership to be dissolved. Despite being highly critical of the conduct of the majority partners in relation to the ouster, the judge declined to make an order for the winding-up of the partnership, as contended for by Mr Mullins. He said, at [107]:

> "Even though I have taken a dim view of the behaviour of [the majority partners] …, I do not think that it would be right to wind up the partnership. Rather, I think, it would be appropriate to order the defendants to buy out Mr Mullins, provided that such an order produces no worse a result for him than winding up."

128. In *Bahia v Sidhu*, at [40], Andrews LJ said although *Mullins v Laughton* could be viewed as the application of the discretion to make a *Syers* order, it could equally be explained as "*an example of the court giving effect to the intention of the contracting parties as to what should happen upon dissolution*."

129. At the trial before me, counsel had referred to the decision of Mr Nicholas Thompsell, sitting as a Deputy High Court Judge, in *Bahia v Sidhu* [2023] EWHC 3028 (Ch). This post-dated the 21st edition of *Lindley & Banks* and the authors' observation about *Mullins v Laughton* standing as the only modern authority on the making of a *Syers* order. The first instance decision in *Bahia v Sidhu* involved what Mr Pearce-Smith described as "a partial *Syers* order". The observation in *Lindley & Banks* stands unqualified now that the decision has been reversed by the Court of Appeal.

130. The deputy judge in *Bahia v Sidhu* had ordered the transfer of certain partnership properties to the claimant in satisfaction of judgment debts which were owed by the other partner (who had died after the partnership had been dissolved) both to himself and to the partnership. The claimant and the deceased partner had been equal partners: see [2022] EWHC 875 (Ch), [2], and [2024] EWCA Civ 605, [9]. The judge (at [64]) regarded himself as making an "*exceptional order*", saying that he was departing from "*the normal order of a sale by auction*", but he was persuaded to do so to meet the justice of the case. The swiftness of the satisfaction of the judgment debts, by the *in specie* transfer, compared with the uncertainty (and cost) of a sale of those properties at auction was an important factor in the exercise of his discretion.

131. Comparing the language of section 39 of the 1890 Act, it therefore appears that the decision was really driven by the prior and necessary "deduction" of quantified judgment debts due to the partnership from the deceased partner's estate rather than by reference to what might thereafter be payable to the estate and the other partner. Indeed, the essential grounds on which the decision was overturned by the Court of Appeal were that the judge had ordered the transfer to the claimant of four partnership properties in which the estate's interest was ostensibly worth significantly more than its actual indebtedness to the partnership (see [19]-[22]) and done so on the basis of property values to be fixed later through an expert determination which it would be virtually impossible to challenge (see [21]). That order created the risk that the estate was being forced to transfer its interest at an undervalue without being able to test the market (see [51] and [60]) when the just order would have been to direct that the properties be put into auction with a reserve and the claimant being allowed to bid on credit up to the amount of the judgment debt (see [63]).

132. It can therefore be seen that, although the judge's order in *Bahia v Sidhu* had also made provision for any element of overpayment to the claimant (measured by comparing the expert valuation with the estate's indebtedness) to be the subject of further accounting between the partners, the order was unjust in carrying with it the potential for the claimant to receive, by way of an '*interim distribution'*, properties which could be worth more than the value given to them by the valuer. In short, the mechanism adopted in addressing the section 39 deduction against the estate could have unfairly inflated the amount supposedly "due" to the other partner on the subsequent distribution of the surplus.

133. Although *Bahia v Sidhu* involved those peculiar features, as opposed to the perhaps more basic question for me as to whether or not one partner should be able to buy out

the other's share (i.e. the value his share net of any sums due to the firm), the Court of Appeal's judgment addresses the wider principles relating to the court's discretion to make a *Syers* order. I return to those principles below when addressing the other appellate judgments on the point.

134. Mr Pearce-Smith also referred to the decision of HHJ Stephen Davies in *Malik v Hussain* [2021] EWHC 1405 (Ch). In that case the court had ordered the partnership to be dissolved. It was at the stage of the taking of the final account, which had proceeded on the assumption that the defendants would buy out the claimant's share, that the claimant then announced he did not wish to sell and his share and would prefer to have the partnership property sold on the open market, with him, the defendants and any other interested party being free to bid. The claimant's fall-back position was that there should be buy-out at a valuation set by the court only if the sale process did not result in a sale. The court decided that there should be a sale on terms as to a reserve sale price, by reference to a court valuation figure, followed by the first defendant's buy-out of the claimant if no sale (on those terms) was achieved.

135. HHJ Stephen Davies explained (at [95]) that was the appropriate course when "*the starting point, especially in a case involving two equal partners, is an order for sale*." He described that as "*the normal rule*" and "*the most expedient means by which the true value of the partnership assets can be realised*"; and he went on to say "*the presumption in favour of a sale is not absolute, so that any other method of settlement may be adopted if it is fair and just as between the partners*": at [26]-[27]. In *Bahia v Sidhu*, at [41], Andrews LJ remarked that HHJ Stephen Davies had noted the observation in *Lindley & Banks* that an order for a buy out between two equal partners would be "*extremely rare*".

136. The judge in *Malik v Hussain* referred (as did Andrews LJ in *Bahia v Sidhu*) to the decision of Mr Murray Rosen KC, sitting a Deputy High Court Judge, in *Benge v Benge* [2017] EWHC 2124 (Ch), at [54] for the observation that the court needs to be satisfied "*with a reasonable degree of confidence*" that a *Syers* order will not lead to the selling partner losing out financially. In *Benge*, at [50], the deputy judge also said that an open market sale is "*the normal starting point, and it is has been referred to as a presumption as to what is just in relation to a winding up.*" In that case the court declined to order a buy-out because the evidence indicated that the partnership property might be sold for significantly more than the value indicated by the valuation evidence. In *Bahia v Sidhu*, Andrews LJ said the words of caution expressed in *Benge v Benge* were particularly apposite to the facts of the case before the Court of Appeal.

137. Mr Pearce-Smith also cited *Lindley & Banks,* at paras. 23-331 to 23-342, in relation to the principles governing the grant of a *Syers* order. He emphasised the authors' view, at para. 23-334, that:

> "There is no reason in principle why the order should not relate to the shares of more than one partner, provided that they together they represent a sufficiently small minority. Equally, as their proportionate share of the firm increases, so will the court's reluctance to make an order. Interestingly, in Anselm v Anselm (29 June 1999 (Ch D.) Hart J appeared to contemplate that the equities might justify that one equal partner should buy out the share of the other in certain partnership

> properties. In the current editor's view, cases in which such an order might be warranted, particularly in the case of a two-partner firm, will be extremely rare."

138. The footnote to that paragraph in *Lindley & Banks* draws a comparison with the court's powers under the Companies Acts, on an unfair prejudice petition, to order one shareholder to buy out another, even if the other is an equal shareholder: see now section 996(2)(e) of the Companies Act 2006. I note that the statutory discretion under the Companies Acts to order such a purchase - usually at a price to be determined by an independent valuation directed by the court and (even where the seller's shareholding is not sufficient to prevent the passing of an ordinary or even special resolution of the company) invariably, in a case where the shareholders are 'quasi partners', without any discount for it being a minority shareholding – is one that draws upon the reasoning in *Syers v Syers*: compare *In re A Company (No. 002567 of 1982)* [1983] 1 WLR 927, 934H-936C and 937G-938A, per Vinelott J, and *CVC/Opportunity Equity Partners & ors v Demarco* (2002) (PC) [2002] UKPC 16; 60 WIR 70, [41].

139. The same footnote in *Lindley & Banks* suggests that a *Syers* order in an equal partner case might be susceptible to a challenge under the Human Rights Act 1998 though a later paragraph (para. 23-242) appears to recognise the likely difficulty in the way of such a challenge if the order achieves that financial aim. [The language of section 996 of the Companies Act 2006, working in combination with section 125(2) of the Insolvency Act 1986, probably explains why there appears to have been no challenge to the compatibility of that statutory provision with the HRA by a member of a company formed under the Act.] If the making of a Syers order reflected an entitlement in the purchaser under a proprietary estoppel or some other similar equity recognised by the court then the notion that the seller has somehow been "*deprived of his possessions*" (the "A1P1" right) perhaps becomes even more questionable.

140. Mr Jourdan KC and Ms Fairley submitted that there was no basis in the authorities for the view expressed in the textbook that the order sought by Matthew, in this case of an equal partnership, is "*extremely rare*". Allowing for the fact that HHJ Stephen Davies in *Malik v Hussain* and Andrews LJ in *Bahia v Sidhu* have each remarked upon that observation, with at least tacit approval, I have some difficulty in understanding why there would be one. Of course, in saying that I recognise that, whatever the size of the selling partner's share may be, a *Syers* order is itself a fairly rare beast (see the observation of Hoffmann LJ in *Hammond v Brearley* mentioned below) but the present question involves identifying a good, legally principled reason for thinking it should be even more rare as between equal partners.

141. The authorities are clear that the aim of a *Syers* order is to give the seller proper value for his share in the "*surplus assets*" identified in section 39. They emphasise that the court should be satisfied that he is no worse off than he would be under a sale of the partnership property on the open market: see *Mullins v Laughton* at [107] and [116]; *Benge v Benge* at [54]; *Malik v Hussain* at [30]-[31] and [64]; and *Bahia v Sidhu* (CA) at [51]. If the court chose to make a *Syers* order over a sale on the open market, whilst harbouring doubt about the achievement of that aim, then an obvious question would arise over the justice and fairness of the order; at least in the absence of other factors counterbalancing that doubt. That is why, in the absence of agreement between the parties upon the value of the partnership assets, there must as a starting point in fixing the price between them be some *reliable* valuation evidence upon

value of the partnership assets (and of its debts) for the purpose of comparing the likely net realisable value of the seller's share through a sale on the open market. For valuation evidence to be reliable it first needs to be interrogated by the court.

142. That being the aim, if the court is satisfied that the *Syers* order will provide the selling partner with proper value for his section 39 entitlement then I see no obvious difference in principle between the case of a partner with a 50% stake in the partnership assets from one with, say, a 10% stake.

143. I note that in *Benge v Benge* - where the deputy judge, at [55]-[56], observed that the court should be "*very careful*" before making a *Syers* order because of the need to be "*very certain as regards what would be a fair value*" - the minority interests unsuccessfully sought to be purchased under a *Syers* order together constituted a 46% share in the partnership. The judge declined to make a *Syers* order because he was convinced by the evidence that the valuations before him might well prove to be "*very significantly less*" than the price which could result from a proper marketing campaign: at [74] and [80].

144. In *Malik v Hussain* the partners had been equal partners, though the partnership business had been conducted through a limited company whose shareholdings were split between the partners (for the partnership) and their wives (for themselves): see [2020] EWHC 2334 (Ch) at [27] and [50] and [2021] EWHC 1405 at [5]. In the event, of the three options identified by the judge at [92], which included a straightforward sale and a *Syers* order, he directed that there should be a sale followed by a *Syers* order if no sale at or above the reserve price (which was to reflect his findings on the valuation evidence) was secured. The factors which persuaded him to do so (see [95]) included the possibility (albeit an "*extremely unlikely*" one) that a third party bidder may emerge and, despite him being reasonably confident that his decision produced a full and fair valuation of the assets, the valuation of the assets was "*particularly difficult at the present time*" in the light of the uncertainty for the restaurant business created by Covid-19.

145. In *Anselm v Anselm* (WL 1865275, unreported, 29 June 1999) – the authority mentioned in the quote from Lindley & Banks in paragraph 137 above – Hart J was concerned with an interlocutory application in an action brought by the claimant for the dissolution of an equal partnership and the winding-up of its affairs. The claimant was seeking an order that the partnership properties be sold. The defendant relied upon an alleged oral agreement to resist them being sold. The terms of that alleged agreement included the defendant's entitlement to all of the partnership properties but also extended, as did the wider litigation between them, to specific terms of respective financial entitlement in companies in which the parties also shared interests. The judge decided that the partnership properties should be preserved pending trial on the basis that there was a triable issue over the alleged agreement.

146. Although he recognised the difficulties in the defendant's case under that agreement Hart J also said: "*Nor can I be at all sure that, even if Ronnie does not succeed in establishing the July Agreement, the court will not conclude that the equities are nevertheless such as to require Ronnie to be given an opportunity of purchasing Yoram's interest in the disputed properties rather than as to dictate their sale to a third party*". The judge referred to the defendant's "*claims to an equity in the*

partnership properties." The ultimate outcome of that litigation is unknown. There is no further reported judgment in the case.

147. I recognise, however, that now the judge's decision in *Bahia v Sidhu* has been reversed (and that not having involved a straightforward *Syers* order for the reasons explained above), there appears to be no reported decision of a *Syers* order actually being made in a case of an equal or almost equal partnership.

148. In my summary below of the relevant principles I mention the significance attributed in some of the other cases to the interest, or a lack of interest, the relevant partner had in the firm's goodwill. It *may* be that in some cases, in what I would tentatively suggest can very loosely (though obviously in what is strictly a legally flawed way) be regarded as this 'quasi-retirement' scenario, an equal partner has a more obvious claim, than might one of several or many partners, upon any goodwill generated by the partnership prior to its dissolution. By that I mean goodwill as an intangible asset which survives the dissolution of the partnership and for which a third party purchaser of the firm's business would pay good money. It would be relevant to consider whether any proposed *Syers* order which contained no provision for the 'outgoing' partner to receive any value for his share of goodwill would lead him to receive significantly less under the order than if a third party (or the other partner) purchased the partnership business as a going concern following a competitive bid process.

149. As I have already touched on in my observations in Section C above upon the rival cases, there is a question in the present case as to whether any value can or should be put upon the future profitability of the Farm and I address that question in Sections F and G below.

150. In *Malik v Hussain*, at [32], HHJ Stephen Davies said he could see the rationale for the observation in *Lindley & Banks* (about the extreme rarity of a *Syers* order being made between equal partners) on the basis that "*it would normally be unfair to prevent an equal partner from bidding to buy out his co-partner or to see whether a third party would pay more than the valuation price to acquire the interest ....*".

151. So far as the first of those possibilities is concerned, in my observations in Section C above I have commented upon the absence of financial benefit for a partner who outbids the other for a partnership asset at a price above that which a third party purchaser would pay for it. It follows, I think, that any *financial* unfairness in an equal partner being unable to bid lies in him being deprived of the opportunity of acquiring the partnership asset at *less than* market value. That prospect of him getting a bargain, which is anything but a good reason for making a *Syers* order aimed at achieving a fair and just result for both (or all) partners, is indeed one that would appeal to any partner, not just to one of two equal ones.

152. There is obviously no unfairness (of the kind the court should recognise) in one partner being prevented from bidding if the only purpose in him doing so is to ramp up the price artificially, beyond the true market price, by making bids that are not genuine. HHJ Stephen Davies recognised this point in *Malik v Hussain*, at [33], [94] and [95(ii)], as was noted (with emphasis) by the Court of Appeal in *Bahia v Sidhu*, at [41].

153. As to the second possibility identified by the judge – the prospect that a third party might pay more than the valuation figure – this is clearly an important consideration as the authorities since *Syers v Syers* confirm. As some of them show, in many cases it will be the decisive consideration. Again, I have made observations in Section C above about how, when viewing matters strictly in money terms, Daniel's point about the valuation evidence being too low is one that can really only be justified by reference to the prospect that a third party might pay more for the assets than the price indicated by the valuers.

154. Having noted, at [33], that a partner wishing to bid should have a genuine intention to buy, rather than be engaged in a bidding war to drive up the price payable for his own share, in *Malik v Hussain* HHJ Stephen Davies also made this important observation, at [34] with which I respectfully concur:

> "In my judgment this demonstrates that the search for further principle should give way to an emphasis on the particular facts of the case, given the width of the discretion exercisable by the court. Thus I do not accept Mr Mather's submission that there is a principle of general application that the court should decline to make an order against an unwilling partner for his share to be bought out unless the court can be satisfied that there is no real risk of his being denied the highest price for his share from making such an order. I am prepared to accept that this would be an important consideration in every case and that in many, perhaps most, cases if the court was unable to be so satisfied that would be a decisive factor against making a buy-out order, but I am unable to accept that there might not be circumstances where the other relevant factors all pointed so strongly in the opposite direction so as to overcome that consideration."

155. That statement confirms that there may be cases where the particular facts show that there is more to the assessment of the partners' rival claims and expectations than just the financials. The case between Matthew and Daniel is just such a case, as demonstrated by Matthew's case and Daniel's alternative case.

156. In particular, by invoking wider considerations of what is fair, just and equitable in the circumstances, one partner may establish an 'equity' which persuades the court to conclude he should be allowed to buy out the other(s) recognising that the *prospect* that the other might have received more under an open market sale is therefore never explored. As I have observed in Section C above, it is neither necessary nor possible to put a precise monetary value on this separate equity. If the *Syers* order is underpinned, as it must be, by reliable valuation evidence as what the selling partner might otherwise have achieved under a full winding up then the financial value (if any) of the equity may not be significant. As I say, Matthew's case is not about money and his expectation of becoming the successor to the Farm is not an expectation of obtaining a financial advantage at Daniel's expense.

157. This is the appropriate point at which to consider whether and, if so, how the decision of the Court of Appeal in *Bahia v Sidhu* impacts upon my observations and analysis of the Syers jurisdiction which I would otherwise have reached on the basis of the arguments advanced before the end of the trial.

Bahia v Sidhu (CA)

158. I have introduced the decision of the Court of Appeal in *Bahia v Sidhu* paragraphs 130 and 131 above. Nugee and Arnold LJJ agreed with the judgment of Andrews LJ.

159. The potential significance of the Court of Appeal's decision is recognised in the counsel's supplemental written submissions upon the decision made by the parties after the conclusion of the trial. Those took the form of Matthew's submissions dated 10 June, Daniel's submissions in response dated 13 June and Matthew's in reply dated 17 June 2024. Daniel's submissions went somewhat further than an analysis of the Court of Appeal's decision by making written submissions on the facts and merits of the present case. Accordingly, Matthew's reply submissions reminded me of some of the points they had made in their written closing submissions at trial.

160. The decision of the Court of Appeal in *Bahia v Sidhu* is binding on me. If and to the extent *Bahia v Sidhu* is inconsistent with the decision of the Privy Council in *Latchan v Martin* (27 June 1984) 134 N.L.J. 745, upon which Matthew relied, the effect will be that I should not treat that earlier decision as having the otherwise strongly persuasive effect it would otherwise have: see *Willers v Joyce (No. 2)* [2016] UKSC 44; [2018] AC 843, at [12].

161. In relation to the binding effect of *Bahia v Sidhu*, Mr Pearce-Smith made a submission which was not material to Matthew's case before me (as opposed to Matthew's contemplated appeal to the Supreme Court mentioned below). He said that the decision was not *per incuriam* on the ground that it was inconsistent with the decision of the with the decisions of the Privy Council in *Latchan v Martin* and of the Court of Appeal in *Toker v Agul* (1995 WL 1082770, unreported, 2 November 1995) upon which Matthew had also relied. Mr Pearce-Smith said that the Court of Appeal in *Toker v Agul* did not refer to its earlier decision in *Hammond v Brearley* (1992 WL 12678533, unreported, 10 December 1992). The Court of Appeal in *Hammond v Brearley* referred to the decision of the House of Lords in *Hugh Stevenson & Sons Ltd v AG für Cartonnagen-Industrie* [1918] AC 239, as did Andrews LJ at [29]-[30], and that was binding authority. Mr Pearce-Smith said that, as the court in *Toker v Agul* had not referred to *Hammond v Brearley* (with its reliance upon the decision of the House of Lords in *Hugh Stevenson & Sons*) "*then logically it must be Toker v Agul which was decided per incuriam*".

162. As I say, it is not necessary for me to address this rather convoluted submission which proceeds on the basis that *Hammond v Brearley* and *Toker v Agul* are inconsistent Court of Appeal decisions. In fact, Mr Jourdan KC and Ms Fairley submitted they were to the same effect in supporting a wide discretion to make a *Syers* order if the facts of the case indicated that was the just result. In any case, *Bahia v Sidhu* is binding on me and they did not submit otherwise.

163. On behalf of Matthew, Mr Jourdan KC and Ms Fairley's primary submission was that the decision in *Bahia v Sidhu*, if correct, did not affect Matthew's case for seeking a *Syers* order on the facts of this case. However, their fall-back position was to say that if I conclude that the decision requires me to make an order for sale when, but for the decision, I would have made a *Syers* order in favour of Matthew then I should make that clear in the judgment. The purpose behind that request would be so that Matthew might then seek permission to appeal and a 'leapfrog' certificate under section 12 of

the Administration of Justice Act 1969 for him to seek permission from the Supreme Court "*so that the law may be put on the correct footing and justice may be done in this case*."

164. Mr Pearce-Smith submitted that Daniel's case in seeking an order for sale is on all fours with the Court of Appeal's decision. The decision confirms that it is only in exceptional cases that the court will make a *Syers* order and there is nothing exceptional about Matthew's claim to one. Mr Pearce-Smith said that *Bahia v Sidhu* was not only the most recent decision of the Court of Appeal on the point in issue it was the only decision at that level on the issue of whether or not to make a *Syers* order. The Court of Appeal decisions in *Hammond v Brearley* and *Toker v Akgul* were appeals from interlocutory decisions (as Andrews LJ noted at [38] in relation to the first).

165. *Hammond v Brearley* concerned an appeal against the judge's decision on a summary basis to order a sale of the partnership assets. The Court of Appeal held it was "*distinctly arguable*" that the trial judge might exercise his discretion to wind up the partnership, so that the claimant could realise his one-third interest in the partnership assets (excluding its goodwill), otherwise than by directing a sale. In *Toker v Agul*, the court allowed an appeal from an interlocutory decision to appoint a receiver and manager of the partnership business, with the receiver having a power of sale.

166. I note that Andrews LJ described it as an "*extraordinary feature*" of *Hammond v Brearley* that the partner who was seeking the full winding up had no interest in the goodwill of the partnership business. *Hammond v Brearley* concerned a stockbroking business and the Court of Appeal's judgment in the case begins with an explanation that the partnership commenced and was governed by a partnership deed under which the parties took over "the name and goodwill" of a business founded by Mr Brearley's grandfather. On my reading of the decision in *Hammond v Brearley*, the Court of Appeal's recognition, at the interlocutory stage, that a *Syers* order might be the appropriate relief at trial was really based upon the wider point that under its terms the plaintiff might obtain the equivalent of what he would have received on his retirement and (see pages 3-4 of the judgment transcript) there was correspondence between the parties, at the time of dissolution, which raised a triable issue that that is what the defendants would pay him "*instead of having the partnership wound up by the court and the properties realised*."

167. As already mentioned, I address the issue of whether Daniel is able to say the Partnership has an intangible asset of value, that can be auctioned or sold, in Sections F and G below.

168. I have already mentioned the decision of the House of Lords in *Hugh Stevenson & Sons* in the context of Mr Pearce-Smith anticipating a challenge to the authority of *Bahia v Sidhu*. The decision concerned a partnership between an English Company and a German company and the entitlement (if any) of the latter, either in the form of interest or post-dissolution profits made through the English company carrying on the partnership business, in circumstances where the partnership had been dissolved by the outbreak of the First World War. It was therefore not concerned with the scope of the discretion to make a *Syers* order. In *Bahia v Sidhu*, at [29]-[30], Andrews LJ identified the relevant parts of the judgments in the House of Lords in support of her approval of the proposition in Lindley and Banks to the effect that a Syers order

required "*special circumstances*". Lord Atkinson referred to a sale of the partnership assets upon dissolution being "*the general rule*", and no partner having a contrary "*right*", and to that being the position "*in ordinary times*". Viscount Haldane said that, in the absence of any specific agreement to the contrary, that "*general principle prima facie applies*."

169. The general thrust of the judgment of Andrews LJ is far from commendatory of the *Syers* jurisdiction. The judgment uses noticeably firm language in reversing the judge's decision to make an order which, as the Court of Appeal recognised, the judge considered to be pragmatic and fair. The question for me is whether the language applied to the *Syers* jurisdiction itself is sufficiently withering that Matthew's continued reliance upon it can now be said to be misplaced.

170. In my judgment, the answer to that question is clearly 'no'.

171. On my reading of the judgment, the paragraphs which pose the greatest challenge for Matthew are paragraphs [1], [27], [46]-[47] and [56] which I now set out in full:

> "1. When a business partnership is dissolved, on the winding up of its affairs, each partner is entitled to receive his or her proportionate share of the realised value of the partnership assets after the partnership liabilities have been discharged. To that end, after the conclusion of any necessary inquiries, an account will be taken of the assets and liabilities, including any liabilities of the partners to and from the partnership. The value of the assets will be realised and the proceeds applied in the first instance to settle the partnership debts. If any of the assets is incapable of being sold, then its value will be brought into account by the partner who retains it. Any surplus will be distributed between the partners pro rata to their respective partnership interests."

> "27. The rationale which underlies the normal practice is that a sale on the open market will usually be the best means by which to achieve a full and fair value for the partnership assets. The partners can test the market with competing bidders in just the same way as they would if they were selling their own property. If one of the partners has a particular interest in acquiring any of the partnership property, an open market sale will ensure that he pays a fair price for it."

> "46. On the other hand, there is no reported authority in which the discretion recognised in *Syers v Syers* has been exercised, or even recognised as arising, in the normal situation where the assets can be sold in the open market without creating any unfairness, and the partners are unable to agree on an alternative. There is nothing in the cases to which we were referred (nor in Lindley & Banks) that suggests that the wishes of one partner to acquire a property or certain of the properties held by the partnership, or their wish to continue running the partnership business, or even their willingness to buy out the other partner at a valuation based on the opinion of an independent expert, would alone suffice to take the case into the exceptional category. On the contrary, the application of the four principles cited above suggests the opposite."

> "47. Nor would it be enough in itself for one partner to complain that the other partner had more money or greater liquidity, and therefore would be more likely to outbid them for any property they both wished to acquire. So long as a fair

price can be achieved, it should not matter whether the purchaser is a third party or one of the former partners. I can see that things might be different if the partner who was better off had achieved an unfair financial advantage by taking monies from the partnership account and using them for his personal benefit. However, if that unfairness could be overcome in any bidding process by allowing the other partner to bid on credit up to an amount represented by the debt owed to the partnership by the defaulting partner or his representatives (as was proposed in this case) then it would not provide a sufficient justification for departing from the general practice."

"56. Whilst it is true that the right to wind up the partnership is a personal right, that does not mean that when the Court (rather than the partners) is carrying out the winding up, the wishes of a surviving partner as to how the value of the assets should be realised should prevail, nor even that they should be allowed to carry any greater weight than the wishes of the personal representatives of the deceased partner. Such an approach is antithetical to the general principle that one partner cannot insist on a distribution in specie, and that the position in default of agreement, save in exceptional circumstances, is a sale on the open market, irrespective of the wishes of one of the partners or even the wishes of a majority. The objective of the court is to maximise the value of the partnership assets for the benefit of all, not to allow the wishes of one equal partner to prevail because the other is no longer able to express their wishes."

172. However, the language of those paragraphs and others (mentioned in paragraph 123 above) recognises the possibility that a *Syers* order in an "*exceptional case*". In paragraphs [44]-[45] of the judgment, the court gave examples of situations where in which a sale by auction:

"… would not serve **the interests of justice**. **It would not maximise the value of the assets or, even if it would**, **it would** unduly favour one of the parties or **unduly disadvantage the other**(s)." (my emphasis)

173. That is an express recognition of the basis of the *Syers* jurisdiction. There is nothing in the judgment (and neither party suggests there is) which doubts the existence or basis of the jurisdiction; or which suggests (with me having the language of section 46 of the 1890 Act in mind) that a *Syers* order is inconsistent with the express provisions of section 39. On the contrary, the decision relies upon the Court of Appeal's decision in *Hammond v Brearley* in support of its examples of situations where the jurisdiction might be exercised.

174. I should also note that Mr Pearce-Smith submitted that the decision of the Privy Council in *Latchan v Martin* was not inconsistent with *Bahia v Sidhu*. Despite him raising the possibility of the decision being *per incuriam*, he said the same about the Court of Appeal's decision in *Toker v Agul*. It follows that the reverse is true, in each case: *Bahia v Sidhu* is not inconsistent with them

175. *Latchan v Martin* concerned section 40 of The (Fiji) Partnership Act which used the same language as section 39 of the 1890 Act. Lord Brightman said (at pp. 8-9 of the judgment transcript): *"[t]he power of the court is not confined to ordering a sale, but is a broader power, namely, to wind up the affairs of the partnership in such manner as to do justice between the parties"*.

176. In *Toker v Akgul*, Evans LJ said such a sale is "*not an arbitrary rule, inflexibly applied in all case whether it is necessary or not*" and, although the court may not be able to resist a sale if one partner insists on it, "*the court is always inclined to accede to any other mode of settlement which may be fair and just between the partners.*" In addressing the *Syers* jurisdiction, he referred to the object being to "*make the order which is appropriate in the particular case*." Addressing the court's power to appoint a receiver in anticipation of a sale of the partnership assets, Evans LJ observed that "*presumptions and the exercise of a judicial discretion do not easily go hand in hand" when "in the field of equity where the court's discretion – that is to say, the court's ability to make the appropriate order in the appropriate case – should reign supreme*."

177. The question is, therefore, what other types of situation, alongside the examples given in *Bahia v Sidhu*, at [44], might qualify for *Syers* relief and is the one presented by Matthew's case one of them?

178. On my reading of it, the decision (at [48]) recognises that the jurisdiction turns on the question of whether or not the normal practice of a winding up through a sale on the open market "*would not do justice between the parties which was the situation that Hoffman LJ* [in *Hammond v Brearley*] *was addressing*." Although the court in *Bahia v Sidhu* did not refer to them, this was also the thrust of the decisions in *Latchan v Martin* and *Toker v Agul*.

179. The facts in *Bahia v Sidhu*, as explained above, were such that the emphasis of the judgment was upon the potential unfairness to the "selling" partner's estate created by the terms of the judge's order. It was apt to produce a potential windfall for the surviving partner. As Mr Jourdan KC and Ms Fairley correctly observed, the non-financial interests of the surviving "purchasing" partner were not a relevant factor in that case when considering the relief appropriate to serve the interests of justice.

180. Although Mr Bahia claimed to have a personal attachment to the four properties to be transferred to him under the judge's order, and also said that he would have difficulty, aged 76, in re-building an equivalent investment portfolio, those claims were treated with an appropriate degree of scepticism. They were raised in the Respondent's Notice and, at [67] Andrews LJ remarked they were "*wisely*" not developed at the hearing. She also referred, at [69], to the judge's own scepticism about those claims: [2023] EWHC 3028 (Ch), at [43]. The judge described them as "*an unexceptional portfolio of mixed commercial and residential properties that, if Mr Bahia were to be unable to buy them at auction, could easily be replaced by comparable properties*."

181. The Court of Appeal noted (at [17]) Mr Bahia's concern that he would be at a substantial disadvantage in having to bid for the properties at auction when the partnership money retained by the other partner meant that his family were in a far better position to acquire them but that could be met by the family's proposal that Mr Bahia should be allowed to bid on credit up to the amount of the unsatisfied judgment debt in his favour (at [20]). The court noted (as had the judge) that adopting that course would mean any element of injustice involved in the sale would be "*surmounted*".

182. Matthew's case, on the other hand, is that his personal "claim" (i.e. the financially unquantifiable claim) upon the Farm is such that the very act of putting it up for

auction will produce an injustice. That would undermine his expectation to become the successor to the Farm which he says has subsisted since the 2005/2006 Conversation. The Court of Appeal's judgment does not expressly address this type of situation which (comparing the language at [27] and [48]) involves Matthew saying his particular interest in the Partnership's property means that it would be unjust for the Partnership assets to be put on the open market when, the court recognising the grounds for his claim based on that personal interest, he is prepared to pay Daniel a fair price for his share.

183. Indeed, in my judgment, the two paragraphs in the judgment which come closest to addressing the situation asserted by Matthew are those in the one case which Andrews LJ recognised could be regarded as involving the exercise of the Syers jurisdiction: the decision of Neuberger J in *Mullins v Laughton*. She said:

> "39. In *Mullins v Laughton* [2003] Ch 250 Neuberger J directed a buy-out of the share of the minority partner, instead of a sale of the business, notwithstanding that three of the majority partners had behaved very badly towards the minority partner by removing him peremptorily. If they had gone about removing him in the right way, they would have been entitled to buy him out under the terms of the partnership agreement. Neuberger J considered that forcing them to sell the business would be a disproportionate manifestation of the court's displeasure at their behaviour. The innocent partner had a relatively small stake in the business (there were 13 other partners) and it appeared that it would be "an uncertain, difficult, and unsatisfactory exercise for a professional insolvency practice to be sold, especially where that practice has different offices in many different cities." Any such sale would also have had an adverse impact on employees, creditors and insolvent persons under the substantial number of insolvencies for which the firm's partners were responsible.
>
> 40. Although that case could be viewed as an application of the exercise of the discretion in *Syers v Syers*, it can equally be explained as an example of the court giving effect to the intention of the contracting parties as to what should happen upon dissolution."

184. In my judgment, the following are obvious points of distinction between the present case and *Bahia v Sidhu*:

i) the absence in *Bahia v Sidhu* of any personal claim upon the relevant partnership property by the proposed purchasing partner. I address Matthew's claim to an equity based on analogous principles to those supporting a proprietary estoppel in the next part of this judgment. The facts of the present case require me to consider whether or not they justify the conclusion that wider considerations of what is just and fair override (though it would be more accurate to say they take account of) any element of uncertainty I may have about the *possibility* that Daniel may do better under a sale. The Court of Appeal did not and had no need to consider a competing equity and the potential value of it. Its decision is essentially about and only about money and a concern that one partner might be short-changed (qua judgment debtor) and the other overpaid in the taking of the overall dissolution accounts between the partners;

ii) the unexceptional nature of the properties in *Bahia v Sidhu* from an auctioneering perspective. I have touched upon the attributes of the Farm (with the Dairy Unit) in Section B above and I return to this in Section F below in addressing Mr Townsend's evidence; and

iii) the evident concern in *Bahia v Sidhu* about the way in which the property valuations had been or would be obtained. One of the valuations was historic and had been obtained for different purposes entirely: it had been obtained by the agents managing the properties on the instructions of the receiver. The other valuation was to be obtained by an expert whose decision would be final "*and thus in practice virtually impossible to challenge*": at [21]. In the present case and consistent with the practice noted in *Lindley & Banks* (noted below) the parties have engaged in the instruction of experts to value the Partnership's assets. The purpose of them being jointly instructed in accordance with the court's order (which, certainly at this stage of the proceedings and whether or not inconsistently with his stance at the CMC, neither party can suggest was "unjust") was so that the court might interrogate the evidence and make a determination about their value. Daniel's position at the PTR in relation to the expert evidence took me (and Matthew) by surprise but the concerns then expressed about the accuracy of the expert evidence were accommodated by the directions made at that hearing. Daniel's counsel has had the opportunity to cross-examine Mr Townsend.

185. There is one further aspect of the decision in *Bahia v Sidhu* I should note and which relates to the first and third points just highlighted. The court (at [54]) made the point that "*[I]f saving the costs of going to auction were a legitimate basis for departing from the usual practice, that practice would not exist, let alone be the norm*". The practice exists to fulfil the purposes of section 39 of the 1890 Act, beginning with the satisfaction of any outstanding debts of the partnership. It is obviously the case that, in contemplating the 'normal' mechanics of a partnership winding up, all the authorities recognise either implicitly or explicitly that it is likely to come at the expense of inevitable and unavoidable costs of sale. It therefore follows that those costs do not take a case out of the norm. However, if other factors do so then it seems to me to be self-evident that the saving of those costs will feed into the exercise of the court's discretion by reference to the *potential* financial impact of a *Syers* order upon the selling partner. The expert evidence in this case demonstrates that the sale costs would be substantial. Matthew is not proposing to deduct one half of them from his payment to Daniel. The court (also at [54]) made the point that significant further valuation and legal fees would have to be offset against the likely costs of sale if a *Syers* order was made. Save for further accountancy fees (see the terms of the proposed *Syers* order in the Annex to this judgment), such costs have already been incurred and become part of the litigation costs. The court's decision as to where those costs should ultimately lie is quite separate from its decision upon whether or not to make a *Syers* order.

186. For these reasons, I have concluded that the decision of the Court of Appeal in *Bahia v Sidhu* does not have a decisive impact upon the outcome of this case. It was not addressing this type of case.

Conclusions on the *Syers* jurisdiction

187. At trial, Mr Jourdan KC and Ms Fairley submitted that the court should be guided by the principles stated in the appellate judgments governing the making of a *Syers* order. The decision in *Bahia v Sidhu* must now be added to the mix. They submitted that the first instance decisions, concerning the exercise of a discretion on the facts of the individual case, should be given respect but are not binding on me.

188. Matthew's counsel did rely upon one passage in *Lindley & Banks*, op. cit., at para. 23-119, which states (with their emphasis) that such a sale "*will not normally be ordered where that would be inconsistent with the express terms or spirit of the agreement between the partners, provided that any specified terms are still workable.*" In my judgment, this passage now derives support from the observation in *Bahia v Sidhu*, at [40], about the decision in *Mullins v Laughton*. I have mentioned above my interpretation of the interlocutory decision of the Court of Appeal in *Hammond v Brearley* so far as "the spirit" of an (arguable) agreement between the partners at the point of dissolution is concerned.

189. Matthew's counsel challenged the accuracy and basis of the deputy judge's reference in *Benge v Benge* to there being a "*presumption*" in favour of a sale on the open market. In my judgment, it is difficult to sustain that challenge in the light of *Bahia v Sidhu* and in particular the passages quoted in paragraph 171 above. I accept that section 39 of the 1890 Act contains no legal presumption and is also to be read in the light of section 46 but it is clear that there is some kind of burden to be discharged if an order for sale is to be displaced.

190. Otherwise, I accept the submissions made on Matthew's behalf as to the nature and width of the court's discretion.

191. In my judgment, the following points can be distilled from the authorities and my analysis of the context, nature and purpose behind the exercise of the court's power to make a *Syers* order:

i) The "normal" order following a dissolution of a partnership (i.e. in a winding up regulated by the court) will be for the sale of the partnership property.

ii) However, the court has a discretion instead to make a *Syers* order in the context of it supervising the winding up of the partnership. Section 39 of the 1890 Act does not direct a sale and the court may make a different order in winding up of the partnership if the justice of the case requires: see *Latchan v Martin* (paragraph 175 above); *Toker v Agul* (paragraph 176 above); and *Bahia v Sidhu*, at [48]. Section 46 of the 1890 Act preserves the court's ability to invoke equitable considerations to mould the relief to "*meet the circumstances of the particular case*": per Lord Cairns in *Syers v Syers*. Obviously, the discretion cannot be exercised to produce an *unjust* result as the decision of the Court of Appeal in *Bahia v Sidhu* reminds us. That would be inequitable.

iii) As the default position under section 39 is that the partnership assets will be sold, and the usual way in which all of the firm's creditors and all of its partners receive what is due to them is out of the sale proceeds, a *Syers* order is

"*exceptional*": see *Bahia v Sidhu*, at [31] and [44]. It is unusual not least because it will involve the successor to the business taking on the debts owed to creditors, and indemnifying the other(s) in respect of them, rather than all of the debts being crystallised and all creditors being paid using liquidated assets. In *Hammond v Brearley*, Hoffmann LJ also referred to the jurisdiction arising in "*exceptional cases*". His observation that *Syers v Syers* was more frequently cited than applied is both an indication that partnership lawyers are alive to the existence of what he described as a "*valuable*" discretion and that they should recognise that (it being a discretionary power and involving a burden on the claimant to displace the usual form of winding up) not every proposed *Syers* order would produce a fair and just result between the partners.

iv) The nature of the discretion and the purpose to be served by its exercise – that of achieving justice between the partners on the facts of the particular case – means that the categories of case suitable for *Syers* relief cannot be exhaustively identified. Examples of some were given in *Bahia v Sidhu*, at [44]. However, the "exceptional" nature of the relief does not mean that a certain jurisdictional bar has to be met or that some strange or unusual (or already judicially recognised) circumstances must be established. Instead, the test is whether, as an exception to the normal rule, a *Syers* order can by justified on the basis it would serve the interests of justice on the facts of the particular case: compare *Bahia v Sidhu* at [45].

v) One other type of case where a *Syers* order *may* be justified is where, unlike an order for the sale of the partnership assets, it accords with the spirit of the parties' agreement or, it was put in *Bahia v Sidhu*, at [40], is consistent with their contractual *intentions* even if it is not justified by the rigid analysis of the contractual position between them. The court might be persuaded that the particular circumstances surrounding the dissolution mean that a full-scale winding-up through a sale would be unjust because it is contrary to their manifest intention or understanding reached not at the beginning of the partnership but instead near the end of its life: compare *Hammond v Bearley*.

vi) Likewise, in my judgment, a *Syers* order *may* be justified by reference to wider equitable considerations – akin to those which arise under the doctrine of proprietary estoppel – if it concludes that one partner has established an 'equity' that operates to qualify what would otherwise be the means of achieving the result ordained by section 39. In my judgment this must follow from the nature of the discretion (directed as it is to a decision upon the manner in which the partnership assets are to be "applied"), the terms in which it has been described by the appellate courts, and the express recognition by section 46 of the 1890 Act of a place for the rules of equity. If the court is able to look beyond the strict terms of any partnership contract or deed in its exercise of the discretion, then it is clearly justified in approaching the exercise of its discretion by reference to such equitable considerations in a case where there is no express contract between the parties and the dissolution of their partnership is governed by a provision (section 39) which does not *dictate* a particular method for achieving that result.

vii) The court may make a *Syers* order even though it *might* mean that the selling partner receives less than he would if the assets had been sold on the open

market: see *Malik v Hussain*, at [34], and *Bahia v Sidhu*, at [45]. The court will have factored in that risk in deciding whether to make a *Syers* order by reference to the claim upon the partnership assets made by the other partner(s). However, the aim of the order being to produce a just result between the partners, and the court needing therefore to have before it all the relevant evidence required for a fair decision, it will also need to be persuaded that the valuation evidence establishes that the risk is not too great. Making a *Syers* order also carries the risk (which the purchaser obviously accepts) that the purchaser is paying too much under the order. If there is substantial uncertainty about the market value of the partnership property then a Syers order may not be appropriate: compare *Benge v Benge* at [54] and [74].

viii) As noted in *Lindley & Banks* op. cit., at para. 23-341, in a case involving a claim to a *Syers* order, the use of a single joint expert valuer is likely to be encouraged at the case management stage. That is what was directed in this case. The focus of the evidence as to value will be upon what the market would pay for the partnership assets rather than what the (proposed) seller suggests he might pay for them: compare *Malik v Hussain*, at [33], and *Bahia v Sidhu*, at [41]. A complaint that more cash should be received is baseless if the complainant would be the source of it.

ix) The commentary in *Lindley & Banks*, at 23-336, states that it will not always be appropriate to value the selling partner's share on the basis of the sale of the partnership as a going concern. Whether or not the nature of the firm's business is such that its sale as a going concern is unlikely (as it sometimes is in the case of professional firms) would be a matter either for agreement between the parties or determination by the court. In *Hammond v Brearley* (involving the stockbroking firm) the court indicated that the case for a *Syers* order would be considerably weakened if (assuming the selling partner had an interest in the goodwill) the valuation excluded any value for goodwill when a third party purchaser of the firm's business, as a going concern, would pay a price for it. In *Mullins v Laughton*, the terms of the partnership agreement (which, even though no longer binding, were to provide the benchmark for the claimant's entitlement under the *Syers* order) expressly provided that the claimant's share of the firm's goodwill had a nominal value.

x) Another factor which will feed into the court's assessment of the overall financial position between the parties, for the purpose of exercising its discretion, include the saving of the costs of sale on the open market. *Bahia v Sidhu*, at [54], involved the unusual circumstance of significant costs of implementing the *Syers* order needing to be offset against that saving. Normally, as in this case, most of those costs will already have been incurred prior to judgment and will form the subject matter of the court's separate discretion in relation to the costs of the case. Although the deputy judge in that case (see [47] of his judgment) did not attach any weight to the argument about the tax consequences of adopting one course over another, I consider this can also be a relevant factor. As Mr Jourdan and Ms Fairley submitted, the tax consequences are relevant in the exercise of the court's discretion when giving effect to a proprietary estoppel: see *Moore v Moore* [2018] EWCA Civ 2669; [2019] 1 FLR 1277, at [96], per Henderson LJ (citing *Jennings v Rice*

[2002] EWCA Civ 159) and *Gillett v Holt*, at p. 235G. I agree that there is no basis for a different approach on the exercise of the discretion to make a *Syers* order. If anything, one might expect this to be a more fertile area (dealing as it is with the disposal of property rather than the acquisition of a proprietary right or interest) for tax considerations to become of significance.

xi) In my judgment, the aim behind the exercise of the exercise of the discretion is at odds with any assumption that the burden on the party seeking a *Syers* order somehow increases with the size of the share sought to be purchased, so that a *Syers* order in a dissolved partnership of two equal partners will be "extremely rare". Consideration of the respective percentage interests of the purchaser and seller under a *Syers* may well form an important part of the court's overall assessment of what is the fair and just outcome in all the circumstances of the case. As I say, it may in some cases be linked to the issue of valuable goodwill.

xii) However, as a matter of principle, there seems to be no reason why a *Syers* order should be treated as unobtainable unless the seller's partnership share is below and/or the purchaser's share is above a certain percentage. *Syers v Syers* itself involved the purchase of "*a very small interest*" and one might perhaps expect a partner (with the appetite for buying out his partner and himself taking on the business with its risks and liabilities) already to have a significant share of the business. Nevertheless, I am unable to identify any good reason why a *Syers* order should not in an appropriate case be made in favour of partner holding a minority share. For example, a younger partner with a minority stake in a partnership at will might make out a case for buying from the estate of the majority partner the share of that partner whose death operated to dissolve the partnership. In this respect, the jurisdiction to make a *Syers* order when the business of the partnership will otherwise cease (so far as all of its present stakeholders are concerned) is quite different from the situation which arises between shareholders on a petition under section 994 of the Companies Act 2006. In that situation the corporate entity and its business continue and one would ordinarily expect (both from the events that are likely to led to the petition and from the balance of equity in the company) that it would be the majority who would buy out the minority.

Proprietary Estoppel

192. The 'equity' to which Matthew refers in the Claim Form in support of his entitlement to a *Syers* order (i.e. with him as purchaser) is a proprietary estoppel. Mr Jourdan KC and Ms Fairley for Matthew recognise this claim involves an unusual application of the doctrine of proprietary estoppel. Matthew's existing equal interest in the Partnership means that he is not invoking it to establish some further proprietary interest against his brother. Nor is it perhaps as obvious as in other cases that he is seeking protect himself from the exercise of an otherwise unequivocal legal right to which, but for the estoppel, he would be exposed. Instead, he relied upon a proprietary estoppel in support of the court's exercise of its discretion to make a *Syers* order and to do so in his favour. The equity had been asserted to persuade the court to adopt a certain course in the realisation of established and undisputed proprietary interests

(both his and Daniel's) in the Partnership. I have already mentioned above that, by the stage of closing submissions, Matthew's counsel acknowledged the potential difficulties in categorising his claim by reference to a proprietary estoppel.

193. There are in my judgment certain difficulties in the way of such categorisation having regard to the shape of an 'equity' which is marked out by the essential elements of a promise/assurance about property, detrimental reliance and unconscionable conduct in resiling from the promise/assurance: see, most recently at the highest appellate level, *Guest v Guest* [2022] UKSC 27; [2023] 3 WLR 911, at [61], per Lord Briggs. I say this recognising that the equitable doctrine which supports any proprietary estoppel is such that the party asserting one should not expect to have his particular individual circumstances tested by "*some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour*": per Oliver J in *Taylors Fashions Ltd v Liverpool Victoria Trustees Co. Ltd. (Note) (1979)* [1982] QB 133, at pp. 151-2, as endorsed by Robert Walker LJ in *Gillett v Holt* [2001] Ch 21, at pp. 225H-226A.

194. However, the circumstances of the present case which point to the risk of distortion of the equity arise because it is not being invoked to *acquire* a legal, proprietary interest. Instead, it is relied upon to support a case about how the court should treat the parties' mutual and undisputed proprietary interests for the purposes of their *disposal*. In that sense, and the dissolution and winding up of the Partnership having come before the court, Matthew's claim is for an equitable relief over a remedy, rather than the assertion of an equity against a legal interest. If established, the equity regulates the operation of section 39 of the 1890 Act. It will determine the manner of "application" of the Partnership's property to which each partner is entitled under the section as a result of the notice of dissolution served by Matthew in August 2022. As Mr Jourdan KC observed, on Matthew's case a member of a dissolved partnership has no "right", as such, to see the firm's property sold if the entitlement under section 39 can be met by other means. Therefore, it is not strictly the case that Matthew is asserting a proprietary estoppel to defeat the unconscionable exercise by Daniel of a *legal right* he otherwise enjoys.

195. On one view, Matthew's grounds for claiming a *Syers* order might have closer parallels with an estoppel by convention operating within the context of the Partnership (at will, and therefore as a contract regulated by the default terms of the 1890 Act) and to which his original Particulars of Claim gave a passing nod; though, again, it goes too far too suggest that Matthew, with Daniel's acquiescence, ever made a mistaken assumption about how section 39 would come to be implemented when the Partnership came to an end.

196. Another factor which *perhaps* indicates that Matthew's circumstances do not easily fit within the shape of this avowedly flexible equitable doctrine is the indeterminate length of time available (namely the duration of the Partnership) for any detrimental reliance within the operation of the Partnership to be offset by equivalent gain to Matthew through the performance of its business. As I observed during Mr Pearce-Smith's closing submissions, all of Matthew's allegedly detrimental reliance is of an "intra-Partnership" nature.

197. It is clear from the authorities that detrimental reliance for the purposes of establishing a proprietary estoppel is not a balance sheet exercise: see *Gillett v Holt*, at

p. 232D; *Guest v Guest* at [9] and [76]; and *Winter v Winter* [2023] EWHC 2393 (Ch), at [133], per Zacaroli J (as he then was). Nor is it open to the court to engage in counter-factual speculation about whether or not Matthew would have been financially better off if the (alleged) assurance had not been made and he had instead pursued a different farming or business venture on his own: see *Gillett v Holt,* at p. 235A; *Habberfield v Habberfield* [2019] EWCA Civ 890, at [48]; and *Guest v Guest*, at [12] and [70].

198. Nevertheless, Matthew's reliance manifested itself in things done with a view to profit (the definitional hallmark of a partnership under section 1 of the 1890 Act). He did those things, in his capacity as an equal partner, over a period of almost 20 years before Daniel's allegedly unconscionable repudiation of the assurance. That provides scope for an argument that, when viewed in hindsight and overall, his actions were either not truly "detrimental", in the proprietary estoppel sense, or are to be treated as divorced from, rather than reliant upon, the initial assurance.

199. This potential difficulty in a proprietary estoppel analysis is illustrated by contemplating what the effect would have been if Matthew and Daniel had acquired Bearley Farm for the Partnership. Such full (and equal financial) commitment by each partner would not of course undermine the (presumed) fact of an assurance given or understanding reached as to what should happen when the Partnership finally came to an end. However, such a significant expansion of the Partnership's business 15 years or so after that assurance would raise questions as to whether Matthew could establish that he was still then relying upon it and/or doing so his detriment. It would also cause the court to wonder whether, applying the yardstick of unconscionability, Daniel should be held to an assurance given in relation to the Farm as it was in 2005-6 when the property of the Partnership had been so significantly expanded through his joint effort.

200. Of course, the Partnership did not acquire Bearley Farm but these observations further highlight the basic point that Matthew is invoking equitable principles not to give him a greater property stake than the 50% dictated by the 1890 Act (see sections 24(1) and 44(b)(4)) but to influence the court's *discretion* over the *disposal* of whatever property the Partnership does own at the date of dissolution. In my judgment, that point distinguishes Matthew's claim from one involving the equity of a proprietary estoppel, in the true sense, and his counsel were right to describe it as a "*proprietary estoppel-ish*" claim.

201. However, the parallels in Matthew's case with the factors which support a proprietary estoppel (and an estoppel by convention) are obvious.

202. Mr Jourdan KC and Ms Fairley referred to following statement in the judgment of Lord Briggs in *Guest v Guest*, 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."

203. That exercise is essentially the same one as that identified in the appellate authorities on the *Syers* jurisdiction (Andrews LJ in *Bahia v Sidhu* having identified customers of the firm's business as one potential class of affected third party).

204. In the light of what Matthew and Daniel have both said about a number of conversations during the life of the Partnership about Matthew buying out Daniel (albeit rather heated ones, to a lesser or greater degree according to their respective testimony) the undisputed facts of this case might also be said to chime with what was said in *Thorner v Major* [2009] UKHL 18; [2009] 1 WLR 776. As Lord Hoffmann made clear, at [2], the initial assurance or representation which may give rise to a proprietary estoppel may not be express but instead "*arise as a matter of implication and inference from indirect statements and conduct*."

205. In paragraph 392 below I summarise the basis of an equity, broadly similar to a proprietary estoppel, which supports the making of a *Syers* order.

F. THE EVIDENCE

Observations

206. Matthew and Daniel each made comprehensive witness statements, including statements in reply. Matthew's principal witness statement is over 110 pages long and runs to 530 paragraphs.

207. Some of the matters covered by them and their respective witnesses were only of background or peripheral relevance to the issue as to how the Partnership is to be wound up. Therefore, the order I made at the PTR, with the aim of ensuring that points of greater evidential significance on that issue were adequately addressed during the 5 day trial, made it clear that counsel could depart from the convention of being required to put to the other side's witness any matter which is in dispute. This meant that neither side was taken to admit any such matter simply because the witness had not been challenged on it.

208. In advance of their closing submissions counsel provided me with a number of authorities concerning the court's approach to the assessment of evidence based upon a witness's recollection of events many years ago. They included the well-known and often cited decision of Leggatt J (as he then was) in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [15]-[22] and *Barrow v Merrett* [2022] EWCA Civ 1241; [2023] R.T.R. 1, at [18]-[21] and [97], concerning the application of some of his remarks in a case arising out of a road traffic accident. They also included the decision of HHJ Gore QC in *CXB v North West Anglia NHS Foundation Trust* [2019] EWHC 2053 (QB), at [7]-[8]], a clinical negligence case, which recognised that Leggatt J was plainly not commending an approach to be taken in a different type of case than the one before him but also expressed doubt about some of his observations upon human memory.

209. As I observed at the start of the closing submissions this case is not classic *Gestmin* territory. It is neither a commercial case (of the *Gestmin* type) or one where the cause of action arises out of some single, life-defining or otherwise immediately memorable event. Although the trial bundle ran to some 14,500 pages (though I should say that approximately 9,500 of those were very much held electronically in reserve) there were no documents relating to the (alleged) 2005/2006 Conversation or the circumstances which Matthew and Hayley rely upon in support of it. That is hardly

surprising given the nature of the relationship between the parties and the nature of the alleged conversation (which was said to relate to an event at some indeterminate point in the future). There are documents which corroborate the fact that a much more recent October 2021 conversation between the brothers took place, in the sense of Matthew acting on what he says was discussed, but (allowing for the fact that Daniel plays down its significance so far as momentum for Matthew's *Syers* claim is concerned) there is now no dispute about that fact.

210. This not being a heavily documented dispute between business entities where contemporaneous documents *might* speak more clearly and reliably than any testimony which is at odds with them and given years after their date, it seems to me that (of the four authorities cited on this aspect of the case) it is probably the dispute *Martin v Kogan* [2019] EWCA Civ 1465; [2020] F.S.R 3, at [88]-[89] which is closest to the present one in character. That was a dispute about the ownership of copyright in a screenplay. The Court of Appeal said, at [89]:

> "……. the judge in the present case did not remark that the observations in *Gestmin* [2013] EWHC 3560 (Comm) were expressly addressed to commercial cases. For a paradigm example of such a case, in which a careful examination of the abundant documentation ought to have been at the heart of an inquiry into commercial fraud, see *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413 and the apposite remarks of Males LJ at [48]–[49]. Here, by contrast, the two parties were private individuals living together for much of the relevant time. That fact made it inherently improbable that details of all their interactions over the creation of the screenplay would be fully recorded in documents. Ms Kogan's case was that they were bouncing ideas off each other at speed, whereas Mr Martin regarded their interactions as his use of Ms Kogan as a sounding board. Which of these was, objectively, a correct description of their interaction was not likely to be resolved by documents alone, but was a fundamental issue which required to be resolved."

211. Provided the court has well in mind what I take to be the incontrovertible observations of Leggatt J about the passage of time clouding or distorting memory and the dangers of "memory" being reconstructed in the process of preparing for trial (which largely underpin the provisions of Practice Direction 57AC so far as the making of witness statements in Business & Property Court litigation is concerned) there are likely to be clear limits upon the benefit in citing authority as to how the court should decide the facts of the case before it. It is instead necessary to approach that task with what the parties must at least trust are some fundamental points of judicial common sense in mind. These require the court to make an overall assessment of a particular witness's credibility - with focus upon his or her demeanour in the witness box, any consistency or inconsistency with what he/she has said in the past, or with what has been recorded in any contemporaneous documents, or said by others (especially other witnesses) - and the inherent probability or improbability of his/her account of events being true. The credibility of a witness should be assessed by reference to all of the matters on which he or she has chosen to give evidence even if a judicial finding on some of them may not be determinative of the outcome of the case.

212. I turn to my assessment of the factual evidence with those observations in mind.

Claimant's Witnesses

Matthew Cobden

213. Matthew was a straightforward witness though he was prone to over-elaboration in some of the answers he gave in cross-examination. Nevertheless, I found his evidence to be honest and reliable on the key points.

214. Matthew's passion for the Farm and the Dairy Unit, which he considers to be one of the best in the country, was apparent in many of the answers he gave in the witness box. Mr Pearce-Smith's own closing submissions recognised that Matthew is "obsessive" about the Farm (with his desire to carry on farming it to be compared with Daniel's preparedness to see it go to the highest bidder).

215. Five witness statements of Matthew were before the court and his principal one was very long. It dealt in great detail with the key events in the life of the Partnership. These included him driving the litigation with Romford Meats (a point recognised by Daniel) with its ultimately successful outcome so far as capital for the Dairy Unit was concerned; his engagement of Mike Bray as a consultant; his efforts in raising funds for the Dairy Unit; and his negotiation of the successive milk supply contracts. It is clear from Matthew's efforts in the litigation with Romford Meats, realising the development potential of the Coat Road land and in forcing Pattemores to pay a settlement sum at mediation that he is the brother who is prepared to fight for the interests of the Cobden family and to see any financial rewards ploughed back into the Farm.

216. It is not feasible for me to attempt a fuller summary of Matthew's evidence, on matters which are less directly relevant to the issues I have to decide. The length of that principal witness statement alone is almost a match for what will in any event be this very long judgment. It is enough for me to say that, in the light of the testimony given by Matthew on the key points, I am reassured that what he said in his witness was a truthful account of other matters is more than likely to be an accurate account.

217. However, I do conclude that that he overstated matters by saying that, in effect, he operated the Partnership as a sole trader with Daniel's tacit support for what he was doing. Daniel's role on the Farm was more significant than that. Nevertheless, a more objective assessment of all the matters covered in Matthew's evidence leaves me in no doubt that Matthew was the driving force behind the business and (allowing of course for the fact that Daniel played a significant part in growing fodder for the cattle) the Dairy Unit was and very much remains Matthew's "baby". I accept his evidence that Daniel was not really interested in the creation of the Dairy Unit and that Daniel's real interest lies in farm machinery and vehicles.

218. Matthew was adamant that the 2005/2006 Conversation did take place. That description of it prompted Mr Pearce-Smith to ask Matthew a number of questions about when, if at all, the alleged conversation took place. In certain paragraphs of his principal witness statement (and also in the original Particulars of Claim which referred to 2005) Matthew had used language which perhaps suggested that the timing was not as he alleged. Indeed, in one paragraph he referred to the conversation as

being in 2004/2005 and in another to it taking place when Daniel and Georgina moved into The Old Dairy (which appears to have been around 2003). However, as Matthew had said in the main section of that witness statement addressing the 2005/2006 Conversation, his repeated answers in cross-examination were that it took place around the time Willy left the business in 2006. Matthew said the conversation took place either just before or just after Willy left.

219. In his witness statement Matthew said:

> *"What I am clear about is as a result of the discussions that Daniel and I had was that Daniel and I were clear that me buying him out was only a matter of time. It would happen. Daniel said one day you will need to buy me out. Basically one day he was going to have to live in Taunton and I would have to buy him out."*

220. Matthew said in cross-examination: "*Daniel told me one day he was going to have to move to Taunton and I would have to buy him out*." He was firm in his answers that his clear recollection is that Daniel said "*one day you will have to buy me out*".

221. He also said that he recognised that he needed to "*tread softly*" with Daniel. In his testimony he said that the amount needed to buy out Willy was known. Matthew knew that he could not afford to buy Daniel out of the business too soon after they had just had to buy out Willy. He said that at that time "*[W]e got on. Daniel was not looking to leave me in difficulties.*" He said:

> *"At the time, my thoughts were, "I hope that does not happen for a little while, because I will not be able to afford it.. Daniel was not looking to put me in difficulties."*

222. Matthew also said that on 3 or 4 occasions, after the Dairy Unit had been built but before the present dispute, the brothers had spoken about Daniel selling his interest. He said they usually arose when he was telling off Daniel about some shortcoming on his part. Daniel replied on each occasion by saying Matthew would have to "*buy me out*".

223. The October 2021 conversation to that effect took place after Matthew had lost his temper with Daniel. Matthew had been working in the maize pit and found it impossible to keep up with the amount of forage being delivered. He then discovered that two foragers were being used. This caused him to swear at Daniel (which he regretted). He and Hayley then went on holiday and he reflected on the tensions which had then arisen in the light of Daniel's decision not to go ahead with the purchase of Bearley Farm.

224. Matthew said this about that last conversation between the brothers about a buy-out which led Matthew to go away and formulate, with Mike Bray's assistance, his £3m offer to Daniel:

> *"Because of the tensions that had emerged by October 2021, I had a conversation with Daniel. By this stage I had decided that I was likely to be in a*

position to buy Daniel out of the business. In October 2021, in the conversation which took place in the Farm office, I asked Daniel if he wanted me to buy him out. Daniel said "Yes". Daniel looked relieved, like he had had a massive weight removed from his shoulders. He said that he wanted to go off with his son Charlie and have their own contracting business. He said he wanted to be his own boss. He said that his Father-in-Law got on with all of his Brothers because they all farmed separately. I took this to mean that he thought that we would "get on" again if we farmed separately."

225. Mr Pearce-Smith asked Matthew questions which related to his suggested detrimental reliance upon the 2005/2006 Conversation. In particular, Matthew was asked about his intentions when CIL embarked upon its legal dispute with Romford Meats over the abattoir business. Mr Pearce-Smith pointed out that, although the dispute culminated with CIL being bought out of SCFF, CIL's unfair prejudice petition had sought an order that CIL should buy out Romford Meats. It was put to Matthew that this would have seen him return to the abattoir business and not therefore devote himself to the Farm in the way he in fact did. In response, Matthew accepted that he was "*in the meat trade at the time*" (i.e. at the commencement of the dispute) but he said he was not sure he would have gone back to it. He said:

> "*Before the trial, we were for sale. The petition was to buy them out, which we could have done, had we got Larry Goodman* - [Matthew explained that Mr Goodman was the owner of a company which later acquired the abattoir business from Romford Meats] - *to come all the way with us. He did not. We were for sale. We spent a year negotiating the sale of our shares in Langport to Romford before the dispute began*."

226. Earlier in his testimony, Matthew had explained how he and his father had been attempting to dispose of CIL's interest in SCFF at around the time Willy dissolved the partnership between the 3 brothers; and how he and Hayley had sold their home in Langport soon after moving to Oaklease House in 2003.

227. Mr Pearce-Smith also asked Matthew about his expectations when Bearley Farm came up for sale in 2021. Matthew's evidence was that he and Daniel had discussed the Partnership buying Bearley Farm and they had put a value on it of £6.5m to £7m. Had they purchased the farm, borrowing from the bank to fund the purchase and the cost of more cattle to go on it, then that would have been a commitment by both brothers which would have been at odds with the idea of Daniel leaving the Partnership as contemplated by the 2005/2006 Conversation.

228. Matthew's testimony on this aspect was as follows:

> *Q. "If you had entered into that. Therefore, as I understand it, when you were having these conversations with Daniel about Bearley Farm, in 2021, you were not expecting Daniel to retire any time soon?"*

> A. *"Not at that time, no. When Daniel told me he did not want to buy Bearley with me and did not explain why or give any reasons and told me that he did not want to do any further capital investment with me, that was a shock. I did not know where we were then."*

229. In the event, and as that answer also reveals, Daniel's decision was that the Partnership should not buy Bearley Farm. It was that decision which really precipitated the dissolution of the Partnership.

230. I asked Matthew about his understanding of the future economic life of the Dairy Unit in the light of the suggestion (at the least an implicit one) on behalf of Daniel that an inadequate value had been put upon it by the valuer both for the purposes of Matthew's April 2022 offer and, now, for the purpose of any *Syers* order. Matthew said:

> "The building should go on for some time. It has a 72-stall rotary. The rotary has a life. I am not sure what that life would be. The rotary is continually maintained. There is a lot of moving parts and milking equipment that needs replacing and we are all the time spending lots of money on it."

231. That answer highlights the obvious point that Dairy Unit is a working asset and that maintaining it over its remaining operating life will certainly come at the expense of the profits of any future operator of the Farm; alongside whatever other expenses may fall to be met out of the Farm's income with others that are likely to be more specific to the financial position and business decision-making of the particular operator in question.

Hayley Cobden

232. Hayley was clearly a nervous witness but I found her evidence to be generally truthful. Her witness statement was wrong to suggest that Matthew had borrowed money from RBS to fund the Romford Meats litigation because, although the security was over their home, Oaklease House, that property was owned by his parents. She was also vague about the dates of certain events but that aspect of a fading memory does not cause me to doubt her claim that the events took place.

233. Hayley was clear that the reason why relations between Willy and his two brothers became strained in the mid-2000's was because Willy wanted the Farm for himself. As I explain below, Daniel's own testimony later confirmed as much.

234. More significantly, although she was unclear as to the date and circumstances, she referred to a particular conversation she recalled having with Georgina during which Georgina said she would not want to pay for anything in the conversion of The Old Dairy that she could not pick up and take away with her to Taunton. Hayley said this was not an unusual conversation. She said it was quite common knowledge that

Georgina wanted to live in Taunton. Georgina's own evidence below supports that being the case.

235. In relation to the 2005/2006 Conversation (again, with no firm recollection as to when in that period it took place but by reference to the building work that was still ongoing at Oaklease House) her evidence made it clear that she was not a party to it and had relied on what Matthew had told her about it. However, Hayley's own involvement in the lead up to the conversation was revealed by the following answers in her cross-examination (and the last in response to my question). She said:

> "I was certainly there in the 2005/2006 conversation when Daniel walked round. Daniel spoke to me first and said he would have to move to Taunton. Georgina did not want to live in Witcombe. I told him he had to speak to his brother."
>
> "I knew where I was standing. I knew what we were doing. I am not very good with dates."
>
> "[Daniel] was smoking and looked, possibly not close to tears, but upset and said that Georgina did not want to live at Witcombe."
>
> And
>
> "It was a bright day. We were working building a wall, I think. We out in our back yard, so I knew where I was."

236. I accept this as truthful, corroborative evidence which supports the 2005/2006 Conversation having taken place.

Mike Bray

237. Mike Bray of Kite Consulting has acted as an independent farm consultant for the Partnership since 2011. He came to be involved in the Farm through John Womack, the Farm's dairy manager, with whom he had dealt previously. Matthew made the approach to Mr Bray. At the time Mr Bray became professionally involved in the Farm the cows were being milked in the Old Dairy and each was producing an average 27 to 30 litres of milk a day.

238. Mr Blundell of the Partnership's bank (see next) described Mr Bray as a nationally known farm management consultant whose assessments he greatly respected.

239. I was impressed by Mr Bray's evidence. In cross-examination, he gave clear, straightforward answers. The thrust of his evidence went largely unchallenged on behalf of Daniel.

240. He was clear that, although his desire was to remain neutral in the dispute between the brothers, the reality is that he has a closer working relationship with Matthew because "*it is in the way in which [he] has driven the business and made those bigger strategic decisions*". [NB. Although the transcript records Mr Bray referring to

"Daniel" in this quoted answer it is plain from the context that, if he did not say it, he meant "Matthew".] He accepted that Daniel was responsible for the agronomy side of the business, though in cross-examination he expressed the view that Daniel might have shown greater interest in the dairy and he (Mr Bray) would have liked to have had more interaction with the agronomist (Tim Rutter, who Daniel consulted in relation to feed and forage) than the one or two meetings they in fact had. He made it clear that if Daniel was to buy the Farm then he would be happy to continue in the farm consultancy role.

241. Mr Bray's evidence included the observation that, from the time he became involved, it was clear that Daniel did not share Matthew's dynamism or his interest in the dairy operation. He said "*Matthew was the leader*". The Dairy Unit was very much Matthew's creation whereas Daniel's real interest was in farm machinery. At the monthly meetings he had with the brothers and John Womack, Daniel's input was less than both Matthew's and Mr Womack's in relation to the dairy operation. Daniel oversaw the tractor drivers and was concerned with the foraging of grass and maize silage. However, until 2022, it was Daniel who decided when to mow and Matthew who decided when the maize should be cut, and in what order, and, after the grass had been cut, if and how many times it would be tedded and then rowed up for the forager. Mr Bray would discuss such matters with Matthew and pass on the information to Daniel. Mr Bray's evidence was that "*Daniel was content with his secondary role*."

242. He also referred to Hayley's responsibility for the internal book-keeping for the Partnership which are used in the preparation of its accounts by Old Mill Accountants. He said Hayley had been "*unfailingly helpful throughout my retainer for the business.*"

243. Mr Bray also gave first-hand evidence of the many of the significant events affecting the Partnership. This included him introducing Matthew to HSBC as a lender for the construction of the Dairy Unit. Daniel was not involved in the initial dealings with the bank; and even at some of the later meetings which he attended it would be rare for him to say anything. Mr Bray said that his own involvement in the dealings with the HSBC led him to have no doubt that the bank's decision to lend financial support was its confidence in Matthew that he would make the dairy operation work successfully; and that this was well placed. The bank lending was dependent upon the Partnership securing the Regional Economic Grant, the potential availability of which he had brought to Matthew's attention. Matthew made the application for a £1m grant with the assistance of one of Mr Bray's colleagues and succeeded in obtaining one of £700,000. Mr Bray also confirmed that it was Matthew who persuaded Richard Cobden to put the money he had received from the Romford Meats litigation into the Partnership; and that shortly before the business went into the bank's 'Special Care' Matthew had invested a legacy from his Godparent into the business.

244. In relation to it going into Special Care, Mr Bray recalled matters with his memorable phrasing of "*how many hits can the battleship take?*" He said that Matthew handled the situation very well and that Daniel was not involved in not only persuading the bank to take the business out of Special Care but also to support more investment in it with the loan of £2.43m for the proposed further expansion of the dairy for a further 500 cows. That was Matthew's doing. Mr Bray said that it was clear to him from his meetings with the bank that the bank was also impressed, as was he, by Matthew's

resolve in driving forward the dispute with Pattemores and securing the substantial financial recovery at the 2019 mediation of the dispute with Pattermores.

245. It is therefore clear from Mr Bray's evidence that, at least since 2011, Matthew has been the dominant and effective driving force behind the Partnership's business.

246. Mr Bray gave evidence prepared a document – a "*partial budget*" – for the Partnership in July 2021 which was prepared for HSBC in connection with the contemplated purchase of Bearley Farm. He had assumed from the fact that Matthew and Daniel had visited Bearley Farm and then discussed its purchase in one of their monthly meetings with him that they were both in favour of purchasing it.

247. In March 2022 Mr Bray prepared the document, based on the Partnership's management accounts, which Matthew presented to HSBC for the purpose of establishing whether it would be prepared to fund his purchase of Daniel's share. He understood that Matthew and Daniel had had a conversation about this and he assumed "*that one was a mutual, was a willing seller and the other clearly was a willing buyer*." That was the reason why, in contrast to the previous pattern of the monthly meeting with both brothers present, his February 2022 meeting was with Matthew only. His understanding was that the brothers had agreed that Daniel would not attend the February meeting because he would help Matthew in putting together projections to obtain bank funding to support Matthew's purchase of Daniel's interest. He observed that in his experience it is quite common in farming families that one partner buys another partner out in order to progress.

248. Mr Bray used the Savill's valuation of January 2022 for the HSBS in reaching the conclusion that Daniel's interest in the Partnership, the residential properties and his 12.5% shareholding in CIL had a value of £2.9m. He said that Matthew decided to ask the bank to lend support for £3m "*so that he could offer something over the odds to Daniel*." Mr Bray attended the meeting on 6 April 2022 at which the bank indicated it would fund a payment of £3m.

249. Mr Bray explained that the depreciation rate of 3% p.a. which he had used in his March 2022 figures for the Dairy Unit (valued at £2.68m) was based upon the buildings having a remaining life of 40 years and the rotary milking parlour having one of 20 years.

<u>Paul Blundell</u>

250. Although I have grouped Mr Blundell within Matthew's other witness, Mr Blundell had in fact also made an earlier witness statement at Daniel's request. It was therefore agreed between counsel that Mr Blundell could be cross-examined by both sides.

251. Mr Blundell is the relationship director on behalf of HSBC in the bank's dealings with the Partnership. His title is Relationship Director Agriculture. He has been dealing with the Partnership's affairs since around 2021. He said that when he took over as relationship manager from his colleague Angela Trotter the Partnership was past its period in Special Care and its business was performing strongly.

252. Mr Blundell said that, until the dispute between the brothers, every meeting with the bank hosted by him was attended by Daniel alongside Matthew.

253. Mr Blundell explained that the freezing of the Partnership bank account was discussed with Daniel in April 2022. He explained that Daniel did not request that it be frozen but he inquired about the process and the consequences. The context was the suggestion that the account should be moved to the HSBCnet and Matthew saying he did not want to make the switch. He explained to Daniel the quite catastrophic implications of a freeze. Daniel did not request one.

254. He explained that he had recently had a meeting with Daniel, Georgina and Peter Parris about lending money to Daniel to enable him to buy out Matthew's interest in the Partnership, the jointly owned residential properties and CIL. He said that, if Matthew had asked for the same "in principle" indication of a willingness to lend £4m, as that given to Daniel, then he would have given the same reply.

Defendant's Witnesses

Daniel Cobden

255. I regret to say that Daniel was not an impressive witness. I felt there was a lack of candour in his answers and an unwillingness to help me to get a full understanding of matters relevant to the determination of the dispute. Hindsight reveals that the pattern of a series of coy answers in witness box was set by his defence being unable to admit the October 2021 conversation between him and Matthew.

256. Daniel was generally vague upon dates and matters of detail. Less understandably, it became clear from his testimony that Daniel had materially overstated certain matters in his various witness statement to the point where they misrepresented matters.

257. In her evidence, Hayley Cobden said this about her impression of the Daniel:

> "Georgina is a strong personality, in contrast to Daniel, who is not. Without wishing to be unkind to Daniel, he is a follower. In his marriage he follows Georgina and in his business he follows Matthew. The latter has always been the case since I have known the Cobden family."

258. Daniel is of course an equal partner in the Partnership and, as a result of that, one of only two parties to the litigation. That said, there were points during his cross-examination where I was left with the impression that this battle was almost not of his making. Allowing for the fact that the atmosphere of the witness box is not generally a convivial one, at times he gave the distinct impression that he really did not want to be there. Daniel's demeanour was almost that of a fall guy. The principal points which left this impression upon me were his inability to sustain much of the account he had given in his written evidence and his evident reticence during his testimony to assist me in understanding what the more accurate account of a particular event might have been. His evidence in cross-examination was dotted with enigmatic answers of "*might have*" or "*could have*" (often without anything or much more).

259. The inaccuracies in his witness statements were generally on matters which denigrated Matthew's role in the business. Mr Jourdan KC suggested to Matthew that these statements adverse to Matthew's character had been made by Daniel at the suggestion of his wife Georgina. Daniel denied that was the case (and in her evidence Georgina Parris denied she had assisted Daniel in writing his witness statements). I make no finding about that but I do repeat that, despite him being one of the only two protagonists in the litigation itself, Daniel came across as a most reticent witness in his own cause.

260. Significant points in this regard, on which Daniel clearly failed to come up to proof of matters in his witness statements, included the following:

   i) The allegation that Matthew had effectively forced Willy out of the business in 2006 through his (Matthew's) unreasonable behaviour and because Willy had refused to agree to Matthew taking out a personal loan against the Farm. In cross-examination, Daniel said he could not remember much about Willy's departure but (confirming what Matthew had said about Willy wanting the Farm for a peppercorn rent) said "*William wanted the farm for himself and Matthew said, "No".*"

   ii) The absence of objective grounds for his stated belief that Matthew would be incapable of farming as a sole trader and has had no input into the actual farming on the Farm. Compare the evidence of Mr Bray.

   iii) His statement that, when Bearley Farm came on the market, "*I indicated to Matthew that I was not interested in buying it*", that he told him that "*from day one*", and that he only went to view it with Matthew as a way of keeping him quiet. In cross-examination, however, Daniel appeared to recognise that he had been keen ("*you are always keen when you have a new idea*") and that the Partnership buying it was "*an option*" which had been discussed at a meeting with Mike Bray. When considered alongside Daniel's accounts of (i) the October 2021 conversation; (2) the meeting he and Georgina had with Mr Butler on 11 April 2022; and (3) Georgina's evidence about the purchase of Bearley Farm (and Lot 2) – each of which I address below – the position adopted by Daniel in his witness statement causes me to be concerned that Daniel has reconstituted 'events' in the light of what in fact transpired in the purchase of Bearley Farm by members of the Parris family.

   iv) The claim in his witness statement that, in early April 2022, he had no idea that Matthew wished to buy him out of the Partnership (as he put it in the witness statement, was "*planning my exit*"). That claim cannot survive the answers given by Daniel in cross-examination, addressed further below.

   v) The suggestion that Matthew had excluded him from the Partnership email account for over a year prior to September 2023. In cross-examination Daniel accepted (before then restating his belief, still, that Matthew was responsible) that the problem may well have been down to a glitch in the software, which had also affected Matthew and Hayley, and that he had not mentioned the issue over his email access until September 2023. The evidence establishes there was no basis at all for Daniel's allegation against Matthew. Similarly,

there was no basis for his contention that he had been prevented from having Mike Bray's monthly reports.

261. Overblown or unsubstantiated statements by any witness will obviously cause a judge to wonder about the reliability of his denial made in response to an allegation or competing account of events.

262. In relation to the 2005/2006 Conversation alleged by Matthew, Daniel's Amended Defence denied this took place and in his principal witness statement he said he would have remembered such a significant conversation. In that statement he said the only conversation he had with Matthew about the future of the business was one which would have involved their three children each inheriting equal shares in it, rather than Charlie having half and Rose and Toby sharing the other half. In his witness statement in reply, Daniel returned to the 2005/2006 Conversation by saying that he and Georgina had in about 2008 discussed moving closer to Taunton because Charlie was about to start school there. However, he says they decided that because of his commitment to the Farm, and the long hours he worked on it, the move would be impractical.

263. In that statement, he said: "*I don't believe I have ever said anything to Matthew to give him reason to believe that I would definitely be moving to Taunton at some point in the future, or that the only reason I was staying at Witcombe was because he could not afford to buy me out*."

264. In cross-examination, as in his witness statement, Daniel said that he and Georgina talked about moving to Taunton when Charlie started school, not in 2005. He also gave answers that he either did have or would have had a conversation with Matthew about possibly moving to Taunton at around the time when Charlie started school, not in 2005 or 2006. Daniel then said he could not remember the conversation and observed that he and Georgina had not moved to Taunton. He denied that he had ever said to Matthew "*I want you to buy me out*".

265. Daniel denied there was any understanding between them, dating back either to 2005-6 or 2008, that he was likely to leave the Partnership at some point and Matthew would have to buy him out. He did accept that there might have been 3 or 4 conversations since 2013 in which he had said Matthew would have to buy him out but that would have been "*in the heat of the moment, in an argument.*"

266. Daniel's witness statement said this in echoing what Matthew had said about there having been several conversations on the point:

> *"the normal course of our disagreements was that he would tell me to leave, and I would say something like "you cannot afford to buy me out". I would say so in order to close down the conversation. Matthew would often be ranting and raging and so quite often his words were unclear. During past rows I have said to Matthew "go away and see how much money you can raise", knowing that he could not raise money to even consider buying out my share."*

267. When asked in cross-examination about one such row, Daniel said he could not remember what words were used. He did accept that the idea of him buying out Matthew was never discussed, and that the idea that everything owned by the

Partnership might have to be sold was never in anyone's mind. Daniel said, in a set of rather confused answers, that he first thought about buying out Matthew over the winter of 2020-21.

268. Matthew says the background to his offer of £3m in April 2022 was the conversation he says took place between the brothers in October 2021 when, Matthew says, he asked Daniel whether he would like to be bought out of the Partnership and Daniel said "*yes*". The Amended Defence did not admit the October 2021 conversation and denied its relevance.

269. In cross-examination, however, Daniel accepted that Matthew had then suggested he should buy him out of the Partnership. Daniel said he had not admitted the conversation because he did not know whether the proposal was to be taken seriously, which is a fatuous explanation. Daniel was anxious to emphasise that he had not said "yes" to the suggestion. This is just about consistent with his witness statement that he had no idea of the alleged agreement in October 2021, though not at all consistent with him also saying in that statement that he did not recall the conversation. Daniel also said in cross-examination that he would have told Matthew that he could not raise the money or that he could not afford it and, a little later, then said he remembered saying something like that. Later again, however, he said there was no conversation in October 2021 and that it would have been in March 2022.

270. Daniel's account of the 2021 conversation was therefore highly unsatisfactory and his development of it obviously encourages the thought that there was a conversation in October 2021 which was of greater significance than he is prepared to admit. His revised position (as I conclude it to be on his evidence taken overall) that he effectively challenged Matthew to come up with the money is more consistent with Matthew's pleaded case than his own.

271. Daniel accepted in cross-examination that he was aware that HSBC's tri-annual valuation of the Partnership's properties had been accelerated at Matthew's request and that this was done so that Matthew could get a value for the purpose of seeing if he could raise the money to buy out Daniel. He therefore recognised that Matthew took steps which corroborated a conversation in October 2021 having taken place. Likewise, Daniel accepted that he did not attend the monthly meeting with Mike Bray, in February 2022, because Paul Blundell was also going to be in attendance and Matthew wanted to have a private meeting with Mr Blundell to discuss raising money to buy him out. Daniel confirmed that, at the time, he was not upset or angry about the idea.

272. Daniel's evidence about Matthew's offer in the Spring of 2022 to buy him out of the Partnership for £3m was also unsatisfactory and, in my judgment, completely unreliable. I have reached the conclusion, in the light of my assessment below of Michael Butler's evidence, that his evidence was aimed at leading me towards an unsound conclusion that Daniel (and his wife) went into a meeting with Mr Butler on 11 April 2022 on some basis other than that of Daniel giving serious consideration to him leaving the Partnership and wanting to address with Mr Butler the fairness and merits of Matthew's offer. In other words, to discourage the idea that Daniel has previously given serious thought to the proposal which Matthew now seeks in the form of a *Syers* order.

273. In his witness statement, Daniel said: "*I had no idea at the time, but it now appears that Matthew was already planning my exit in March 2022. I refer to the "Buy out" proposal prepared by Mike Bray and dated 23rd March 2022*." Although that proposal bore the dates of 23 March and 6 April 2022, respectively, Daniel said that it was only provided to him later by the bank. In cross-examination, he said this would have been in August 2022, by email, though no relevant email had been disclosed by him. Therefore, his position, in his witness statement and initially, at least, in cross-examination, was that he knew nothing of Matthew's proposal to buy his share when he and Georgina met Mr Butler at the Farm on 11 April 2022. Of that meeting, Daniel said that Mr Butler was there to see Georgina about her business affairs and that he (Daniel) took advantage of the opportunity to discuss with Mr Butler his "*options at Witcombe*". Daniel said this was because relations with Matthew had broken down and things were getting worse and worse.

274. On the evening of the last working day before the start of the trial, Friday 10 May 2024, certain documents were produced by Mr Butler from his file. This was the result of an order made by me at a hearing on 26 April 2024. One was a copy of a letter dated 13 April 2022 from Mr Butler to Daniel and Georgina (to Georgina's address in Taunton) which was also said to have been sent by email. Daniel had not disclosed this letter. He also told me in evidence that it was not emailed to him "*and that is why we could not find it for disclosure*." In fact, after Mr Butler had later given evidence at the trial (and during that evidence expressed his preparedness to look for the email) it is clear that the letter was sent by email to Daniel on the morning of 13 April 2022, by an Administration Assistant in Mr Butler's firm, and that Daniel then forwarded it to Georgina. The other document produced by Mr Butler on the eve of trial was the notes of his meeting on 11 April 2022.

275. Mr Butler's letter of 13 April 2022 and his notes of the meeting two days before (relating to the "ad hoc advice" given in relation to Daniel's interests in the Partnership) related, as the heading to the letter described, Daniel's "future family farming interest".

276. The letter began by thanking Daniel for inviting Mr Butler to meet him and Georgina. It expressed Mr Butler's understanding that Daniel wanted to avoid conflict and in particular a lengthy and expensive legal process whilst at the same time ensuring (with the writer's emphasis) "that you receive *fair value* for your interest in the business and the effort you have put in over the years." It went on to mention the Savills' valuation of January 2022, talked about the merits of obtaining some "headline legal advice" and also said:

> "*You are happy to consider the alternative option of possibly paying out your brother and this may be possible and may be determined by the funding levels which your brother could [sic] – can he afford to pay you out?"*

277. The notes made by Mr Butler at the meeting two days earlier reflected a reasonably comprehensive analysis of figures bearing upon what they described as "*advice in relation to your interests in the farming partnership MH & DH Cobden and company Cobden Farms Limited. Ad hoc advice*." In relation to the Savills' valuation of £10.06m of the Farm's land and buildings (within the £10.055m figure identified in Mr Butler's letter), the notes raised the query "*Low? Bank Value*."

278. A plain reading of these documents, produced on the last working day before the start of the trial, shows that any witness evidence to the effect that Daniel did not arrange a meeting with Mr Butler to discuss Matthew's £3m offer (evidence perhaps given on the assumption that they would never come to be read by the court) is simply not credible.

279. They also provide the grounds for a strong inference that the two main points against Matthew's proposed buyout (pressed Daniel's behalf at the trial)) – that the (then) Savills valuation might be too low and that Daniel might have greater financial clout for buyout purposes – took seed at this meeting between Mr Butler, Daniel and Georgina.

Georgina Parris

280. Georgina was, on my assessment of her evidence, an unreliable witness.

281. Georgina explained in her witness statement that, after the birth of Charlie in January 2005, travelling to Taunton for work in the Parris farming business with a small child was difficult. She said it was no secret that she and Daniel explored the option of living closer to Taunton and that they explored options of an alternative home between Witcombe Farm and Taunton. However, they took the decision to remain at Witcombe and she and Charlie would stay with her parents in Taunton up to three nights a week. When Charlie started school that was a further reason to be in Taunton.

282. That evidence is not inconsistent so far as the underlying circumstances leading to the 2005/2006 Conversation (according to Matthew's and Hayley's evidence are concerned).

283. However, Georgina said she would not have made her own sacrifices in support of Daniel working to make the Farm viable if there had been an understanding that Matthew would one day take over Daniel's interest. She said there was "*never any mention of any discussion or negotiation or conversation between Daniel and Matthew of that nature.*" She referred to Daniel's long working hours on the Farm and said Matthew rarely got involved and was at home a lot more. She expressed her opinion that Matthew "*knows very little about farming*" and that the employment of a dairy manager, and Hayley, means that there is very little left for him to do hands-on.

284. Georgina's witness statement also said (even though this was well before she married Daniel) that Matthew drove Willy out of the brothers' partnership and that Matthew treated Willy in the same way as he is now treating Daniel in the same way. Her belief, in hindsight, is that "*Matthew always intended to drive Daniel out as well*." She also said that she knew of no conversation between the brothers, about a buy-out, in October 2021

285. The fact that her own husband recanted his own allegation about Matthew forcing out Willy and also that (albeit unsatisfactorily) gave evidence about the October 2021 conversation demonstrates just how unreliable Georgina's was upon matters other than her own personal or domestic circumstances. As Matthew's counsel correctly

observed, in relation to matters relevant to the issues I have decide she was an advocate, not a witness speaking to her own direct involvement in events. Her assessment of Matthew's farming abilities, which on her own evidence is one made despite significant periods of absence from the Farm, is completely at odds with Mr Bray's expert, informed and independent assessment.

286. My concern that Georgina's evidence was perhaps motivated by an overriding desire to have this case decided in favour of Daniel (and therefore also in her own interests), regardless of whether the court's decision on the true facts supported them, is reinforced by what she said about the purchase of Lot 2. In her witness statement she explained how she was not even aware that Bearley Farm had been for sale until she learned of its purchase by her brother Richard and Mr Heal. The deal had been done and it had happened over a very short timescale. Then, she says, with her father Peter Parris, she agreed to buy Lot 2 from her brother and Mr Heal. There was a swift completion. Georgina said Lot 2 would be beneficial to the Farm because it was neighbouring land and Daniel had a constant struggle to find enough rented land to grow fodder for the cows. Georgina said in her second witness statement that it was totally incorrect and untrue for Matthew to suggest that the purchase of Bearley Farm and Lot 2 represented a "Parris takeover".

287. In Section B above I have briefly summarised the transactions by which Bearley Farm and Lot 2 were both purchased in March 2022. In cross-examination, Georgina stuck to her version of events (i.e. that there was, in effect, a 'sub-purchase' of Lot 2) even though contemporaneous documents clearly showed the Parris family partnership buying Lot 2 directly from the owners of Bearley Farm, Mr and Mrs Walters. Georgina's protests to the contrary did not make any sense. She was unable to explain the documents, which included her own signature (on behalf of the Kibbear Farm Partnership) on the contract with Mr and Mrs Walters.

288. They leave me wondering whether members of the Parris family planned the purchase of Bearley Farm or Lot 2 over a longer period than Georgina would like the court to believe. Although an allegation of wrongdoing by Daniel in connection with the purchase is no longer pursued, and this can therefore remain a matter of speculation, that thought inevitably leads me to wonder whether Georgina's explanation was intended as a smokescreen to mask at least some of the relevant events.

289. I regret to say I can put no weight on Georgina's evidence so far as it conflicts with Matthew's case. As I say, the fact that she recognises that in 2005 she and Matthew made no secret that she and Daniel were exploring the idea of moving to or closer to Taunton is not inconsistent with the evidence of Matthew (and Hayley) about the nature of (and background to) the 2005/2006 Conversation.

Michael Butler

290. Mr Butler is a chartered accountant. At his previous firm, Old Mill Accountants who act for the Partnership, he had some involvement with the Partnership's business affairs but the primary point of contact was his colleague Neil Cox. He attended a meeting with Mr Cox, Matthew and Daniel on 17 November 2014 in connection with the investment into the Partnership of moneys received by CIL from the Romford

Meats litigation. Since late 2020, Mr Butler (at his current firm of Francis Clark LLP) has acted for the Parris family.

291. In his witness statement dated 23 November 2023 Mr Butler said that both Matthew and Daniel were committed and engaged in Partnership decisions which involved him. At the date of that statement Matthew's claim that Daniel had breached his fiduciary duty to the Partnership in relation to the purchase of Bearley Farm by members of the Parris family was still live; and Mr Butler (who was involved in considering the tax considerations and arrangements for that purchase) said he had no knowledge that Daniel was aware that the purchase was being undertaken.

292. Mr Butler said his first involvement with Daniel (without Matthew) was on 11 April 2022 when he met Daniel and Georgina Parris "*following their unsolicited approach to me*". He said the meeting was to consider what options they had in relation to the Partnership from an accountancy perspective, in the light of difficulties in the relationship between Matthew and Daniel, and "*both were looking to consider what options may be possible moving forward*."

293. During cross-examination Mr Butler said he had planned to meet Georgina at the meeting, at The Old Dairy House, and Daniel was there. He had not planned to discuss Daniel's position in the Partnership and he learned for the first time at that meeting of the difficulties between him and Matthew. Mr Jourdan suggested to Mr Butler that Matthew made him aware of Daniel's £3m offer at the outset of the meeting. Mr Butler responded by saying that he was aware there had been talk of such an offer being made and then, by a later answer, that Daniel had told him that Matthew had made an offer. Mr Butler repeatedly said he was not aware of the amount of Matthew's offer. He described Daniel and Georgina as anxious and upset because they did not know what to do. He said he did not think they had been contemplating the offer for months. He said an offer by Matthew to buy out Daniel was "*one of the options*" to be considered. Mr Butler confirmed to me that, in the event, the discussion of those options dominated the meeting so that no business of Georgina's was discussed.

294. Mr Butler had not referred in his witness statement to any documents in connection with the meeting on 11 April 2022 even though his witness statement said that, on issues important to the case, he would state how and when his memory had been refreshed by considering documents. Mr Butler confirmed in cross-examination that he had referred to his meeting notes and the letter dated 13 April 2022 when he made his witness statement.

295. On 26 April 2024 I made an order that Daniel's solicitors should write to Mr Butler requesting him to provide a copy of the documents in his file for the period April 2022 to August 2022 relating to the purchase of Bearley Farm. Matthew had made an application for disclosure of that file on the basis that, as pleaded in the APOC, Mr Butler had advised Daniel in April 2022 and immediately before the emergence of the dispute which led to this litigation. Daniel had opposed the application on the basis that (consistent with the approach taken in the Amended Defence) that pleaded allegation was, he said, not relevant and the request for documents was a fishing expedition. I was persuaded to make the order I did by reference to Daniel's denial that he was involved in the purchase of Bearley Farm.

296. The meeting notes and letter were produced on Friday 10 May 2024 (which was the last working day before the start of the trial) in response to the request directed by the April order. Mr Butler is correct to say that they do not refer to Bearley Farm. He said he "*was happy to disclose the note just to confirm that there was no reference at all to Bearley Farm in that meeting*."

297. I regret to say that answer begins to reveal what had become clear by the end of Mr Butler's evidence: that he appeared to me to put his loyalty to his clients (certainly Matthew as his ad hoc "client" on 11 April 2022 and also the Parris family to the extent their own wider business interests may be allied with Daniel's) above any concern to assist the court in gaining a fuller understanding of relevant events.

298. I say that because, until the eve of the trial, Mr Butler did not appear to be at all happy for his file to be seen. When asked by Mr Jourdan KC in cross-examination for his explanation for his witness statement not identifying the notes and letter as documents by which he had refreshed his memory on an important point in the case, he suggested that this was because he had not understood it to be part of Matthew's case that Daniel had been happy to receive a buy-out offer. Any weight that might be attached to that answer is lost as a result of what followed after service of the witness statement.

299. By their letter dated 14 March 2024, Ebery Williams on behalf of Matthew asked for disclosure of the notes of the meeting in April 2002 mentioned in the witness statement. Mr Williams (who was referring to his and Mr Butler's involvement in the previous case of *Moore v Moore* [2018] EWCA Civ 2669 where Mr Butler gave the evidence mentioned in the judgment at [96]), said:

> "I know from our past dealings that you are a prolific note maker, therefore I anticipate there will be a comprehensive note of the advice that you gave and the information that was supplied to you. That must be disclosed."

300. Mr Butler responded on this point by a letter dated 26 March 2024, saying:

> "My meeting in April 2022 was merely by way of introduction and in fact I confirm that very little happened following that meeting and that no advice was given in connection with any specific steps that may have been anticipated with regard to dispute or potential litigation. I am therefore fearful that I will disappoint you there is no such prolific note on this occasion."

301. Mr Jourdan KC suggested to Mr Butler in cross-examination that his was a carefully drafted response aimed at giving the impression that there was no meeting note (whether "prolific", "comprehensive" or otherwise). That is certainly the clear impression I had at the hearing on 26 April 2024 as I believe any transcript of the relevant exchanges and of my decision would reveal. The meeting notes (and follow up letter) having been produced, Mr Butler was driven to meet Mr Jourdan's point by saying that he did not give advice to Daniel as he was not able to give it (the follow up letter had enclosed a formal retainer letter) and that he understood he only needed to provide a note if it was a "prolific" one. In the face of what plainly (to any reader but especially a professional man) was a request by Matthew's solicitors for any note of the meeting mentioned in his witness statement (and what was belatedly produced appears to support their belief that he is a prolific maker of comprehensive notes) that answer was not credible.

302. Mr Jourdan KC and Ms Fairley described Mr Butler's approach as partisan in the extreme. They submitted the court should put no store at all by his evidence, which I do not, and should condemn the approach which he adopted in this case, which I do.

303. It follows that Mr Butler's evidence does not provide Daniel with any support in resisting Matthew's case that, prior to the April meeting, Daniel had reacted positively to the idea of being bought out. As Mr Butler's notes were largely about figures, which would feed into the idea of Daniel receiving what Mr Butler's letter then described as the "*fair value for your interest in the business and the effort that you have put in over the years*", it is in my judgment inconceivable that Daniel and Georgina would not have told him the amount that Matthew had offered 5 days previously.

Alan Peter Parris

304. Peter Parris is Daniel's father-in-law. He has been a farmer for over 60 years.

305. I found Mr Parris's evidence to be of limited value.

306. He recalled a discussion many years ago about Daniel and Georgina moving to Taunton. Daniel did not want to move and the compromise was reached that Georgina would stay with her parents about three nights a week. He said that he was sure that if there had been discussions between Matthew and Daniel about Matthew one day taking over then he would have heard about them.

307. However, in cross-examination, Mr Parris recognised the obvious point that he would not know of things that were not discussed in his presence. I would add that, the circumstances of the 2005/2006 Conversation being as described by Hayley and Matthew and springing from Daniel being upset about the prospect of one day having to leave Witcombe for Taunton, it is not at all obvious to me that Mr Parris would have been made aware of it, even assuming Georgina (as his obvious source of information and in relation to whom there would be equivalent doubt) had been.

308. In his witness statement Mr Parris described Matthew's work on the Farm as routine work (meaning that it required only occasional reviews of the day-to-day activities of the dairy) and that the work was essentially done by the dairy manager and Hayley. His answer about this in cross-examination revealed that it was based on his own experience of what livestock as opposed to arable farming involves. He said he spent very little time on the Farm but visited Daniel and Georgina fairly regularly for lunch.

309. Mr Parris gave the same evidence as Georgina about how Lot 2 was purchased from his son Richard and Mr Heal, so I find that to be unreliable evidence in the face of the contemporaneous documents. Mr Parris's answers in cross-examination left me perplexed as to how the suggestion of a purchase from them fitted in with Lot 2 nevertheless being put up for auction and the documents showing that it was bought by the Kibbear Partnership two days before the auction (Mr Parris is evidently mistaken in saying the contract was signed on the day of the auction).

310. He also said "*I can categorically state that at no time was Daniel involved in any form of discussion with Richard or Nick Heal regarding the purchase of Bearley Farm*." I accept this evidence to the extent that Mr Parris was saying he was not involved in any such discussion in which he was involved (or, as he went on to say, "*so far as I know*").

311. Mr Parris said in the Spring of 2021 he and his family were looking to buy a farm but he had no interest in Bearley Farm, as it was not the type of farm his family wanted, but he was interested in 2021 in the purchase of Lot 2 because it was 56 acres of better quality land.

William Cobden

312. Willy's evidence was largely immaterial to the issues for determination by me. His witness statement addressed a number of matters which were critical of Matthew in relation to the conduct of the old partnership between the three brothers. This included the period when Matthew was working in the abattoir business in Langport.

313. Willy said he had put a lifetime of work on the Farm and had been "*forced out by Matthew*". This evidence conflicted with that of both Matthew and Daniel who said that Willy wanted the farm for himself but Daniel refused. When that evidence was put to Willy in cross-examination, he said "*I do not think so*", and went on to say that, he could farm with Daniel but not Matthew, and that Matthew had "*bullied*" Daniel into staying. In my judgment, Willy's evidence on this peripheral point but introducing a suggestion (that Daniel did not want to remain at Witcombe) which neither party had made, is not to be relied upon.

314. Although Willy made it clear in cross-examination that his view was one of an outsider, who visited his mother on the Farm from time to time, I take the same view of Willy's evidence in his witness statement that "*Matthew does not know much about farming and Daniel has always been a capable and conscientious farmer putting the interests and welfare of the herd before everything*". In my judgment, that statement is not grounded in reality as revealed by the evidence of Matthew, Mr Bray and (in relation to the division of responsibility between the two brothers) Daniel himself.

315. Willy said that he has remained close to Daniel since leaving Witcombe. He said they are close and speak three or four times a week. He said:

> *"I have no knowledge as Daniel has not mentioned any deal or arrangement between him and Matthew as to what would happen to Daniel's share if he left the farm."*

316. Willy said he knew that Daniel would not have behaved inappropriately in relation to Bearley Farm.

Other Witnesses

317. Daniel had contemplated calling 6 further witnesses who had made statements in advance of the trial. However, it was agreed between counsel that they need not be

called to give evidence. This was on the basis that Daniel was entitled to rely upon their statements for the purposes of the trial but was not entitled to rely upon the fact that they had not been challenged in cross-examination on behalf of Matthew to contend that their evidence stood unchallenged. Instead, it was recognised that Matthew was entitled to challenge the relevance of their evidence for the purposes of the present trial and would be entitled to challenge that evidence generally at any future trial or hearing.

318. The evidence of those witnesses is not my judgment material to the issues for determination in this judgment.

The Valuation Evidence

319. The order made at the CMC in May 2023 provided for expert evidence to be given by a 'Rural Chartered Surveyor' and a 'Live and Deadstock Valuer' (to use the headings introducing the subject matter of the respective valuations) acting as a single joint expert.

Michael Townsend

320. Mr Townsend is a Director of Savills based in the firm's Exeter office. He has extensive experience in valuing residential and agricultural property in the South-West of England. He has been doing so for the past 43 years or so.

321. I have explained in Section C above how Daniel's informal application at the Pre-Trial Review led to Mr Townsend came to give oral evidence at the trial.

322. Mr Townsend was an impressive expert witness. He was the author of the Savills Report prepared for HSBC in January 2022 for the proposed lending to support Matthew's offer of £3m to Daniel made in April 2022. He explained that the valuation for the bank included a 15% discount in the market value of the land and buildings to reflect a restricted marketing period of 3 months.

323. In his Expert Report dated 29 August 2023 Mr Townsend valued the land and buildings at the Farm (identified in paragraph 9.3 of the report) at £9,855,000 as at 7 August 2023. He valued the buildings (including the Dairy Unit) at £2,430,000.

324. The valuation was on the 'Market Value' basis (assuming vacant possession) – as identified in 'RICS Valuation – Global Standards', or "Red Book") being:

> "The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion."

325. The figure of £9.855m reflected a tolerance of 5% either way. His report stated: "*Valuation is not an exact science and I believe that any value greater or less than my figure by around 5% is effectively the same figure.*" That was Mr Townsend's

percentage for the tolerance within his figure, compared with the 15% which reflected his firm's standard wording in valuation for loan security purposes. He said that if another valuer were to arrive at a figure outside the 5% range of tolerance then he would wish to consider with care both the comparables and the approach taken by that valuer before any review of his own figure.

326. Mr Townsend said that since August 2023 the residential market in Somerset had effectively flat-lined whereas his firm's internal data indicated that agricultural land values had risen by 4.1% during the period. He said the land may therefore have increased in value by £150,000 to £200,000.

327. Mr Townsend readily accepted that, with a property such as the Farm, until the property goes on the market its true value in the market will not be established. He accepted that the absence of direct comparables increased the chance that the true value might be different from his own valuation. He said: "*You might get a lot less, you might get more ... and the market is very fickle and occasionally difficult to read.*" However, he said that to his own personal satisfaction the vast majority of his valuations had predicted the eventual sale price quite accurately.

328. In Mr Townsend's opinion, the size of the Dairy Unit means that it would appeal to a narrower market in terms of the number of potential buyers but those buyers would come from a much wider geographical area covering the whole of the UK and beyond. He mentioned that his firm had seen a lot of activity from Danish, Irish and European farmers.

329. Mr Townsend accepted that the absence of directly comparable evidence made the valuation of the Farm more challenging than for a standard type of residential property but "*it does not make me any less confident in the resultant figure because of the way I have approached it*." Bearley Farm was mentioned in his report but he accepted it was not comparable to the Farm with its Dairy Unit. During his testimony, Mr Townsend said he had been involved in valuing three or four similar units around the UK but he had not relied upon them as comparables because they did not involve sale transactions.

330. Mr Pearce-Smith asked Mr Townsend some questions about the profits generated by the Partnership since the Dairy Unit had been built. Mr Townsend confirmed he had not been provided with information about the Partnership's profitability and that, had it been relevant to his opinion on the market value basis of valuation, he would have asked for it. However, it did not feed into market value. He said that this point about the possibility of including the profitability of a farm within a valuation of it was "*something we debate quite a lot within our team of valuers*". His report confirmed that his valuation did not include any additional value which is attributable to goodwill "*because we are not valuing as a going concern*."

331. Mr Townsend's evidence was that, even with an evidently profitable farm in the hands of the vendors:

> "The market still operates... The market still does not reflect it. We have not... I have discussed it with all of our agency teams all across the country and they have yet to see a differentiation in the market establishing itself. The market tends to operate in a very traditional way, the buyers tend to be mostly traditional

buyers, you know. As you rightly say, there are these larger operators who will be much more commercially-minded, I would say, who might approach it in a different way, but generally the agricultural market is, the buyers are generally 50% these days existing farmers and 50% are non-farmers and they do tend to look at what sold for what price recently in the area. It tends to go back to comparables, if you follow me. It may happen. It may evolve --- that the market actually starts to reflect the exceptional profits, the enhanced profits that can be generated by this sort of set-up."

332. Later, in response to a question from Mr Jourdan KC, Mr Townsend explained that a farm (the land and buildings) would be sold separately from the livestock and machinery. He referred again to the debate within his firm as to whether offering the farming business as a going concern would result in some sort of marriage value between the livestock, the deadstock, the staff and the farm, but he was not aware of a sale where that had been done.

333. Mr Pearce-Smith suggested to Mr Townsend that 'special purchaser' considerations might justify the Partnership's land being given a higher value than might otherwise be the case. His questions were put on the basis that a purchaser of the Dairy Unit would need to acquire a lot of land to grow enough fodder to feed the number of cattle that is required to maximise the unit's potential. It was counsel's suggestion that such a purchaser would not only need to acquire all of the Partnership land but perhaps additional land nearby which perhaps contained the hint that this might mean the Parris family (with its recently acquired interests in Bearley Farm and Lot 2) would back Daniel to make a bid for the Farm in excess of Mr Townsend's valuation.

334. I have explained in Section C above the reason why Daniel's own desire to acquire the Farm, at higher than open market value, cannot in my judgment influence the court's decision on whether or not to make a *Syers* order. However, addressing the special purchaser suggestion more generally, Mr Townsend did not accept it. His response was that if the need to buy the land to support the Dairy Unit put the purchaser of the land into the category of 'special purchaser' then "*that would apply to every farm*" (assuming the farm is equipped) and "*would imply that every purchaser of every farm would be a special purchaser of the land*." He confirmed that he had valued the Farm on the basis of its component parts – the Dairy Unit and the land – and that the hypothetical willing purchaser is buying both.

335. Mr Townsend was asked by Mr Jourdan KC about the likely costs of sale if the Farm was to be put on the market. He said that the selling agent's percentage commission would be negotiable but "*they usually seem to charge 1.5%, something like that, plus advertising plus VAT*."

<u>Sally Mitchell and Tom Mellor</u>

336. Ms Mitchell and Mr Mellor are both RICS Registered Valuers employed by the auctioneers Greenslade Taylor Hunt. Ms Mitchell valued the Farm's livestock and Mr Mellor its vehicles, machinery, fodder and standing crops. Neither was called to give evidence.

337. By their joint Report and Valuation dated 14 September 2023 they gave the livestock and deadstock a market value, as at 15 August 2023, of £3,093,886.50. As result of the direction made at the PTR they prepared revised valuations based upon an inspection closer to trial. This produced a valuation, as at 29 April 2024, by Ms Mitchell of the livestock in the sum of £660,319, and by Mr Mellor of the deadstock in the sum of £1,870,064: a total of £2,530,383.

338. Neither party sought to question these figures, though I mention below Matthew's proposal, made in the interests in fairness, as a result of Mr Mellor's valuation highlighting how the value of a farm's fodder and standing crops can obviously change with the seasons,

G. CONCLUSIONS

339. Consideration of the evidence at trial against the legal principles addressed in Section E above leads to the following conclusions.

Conclusions on the Facts

The Rival "Claims" to the Farm

340. The evidence given at trial leads me to have no doubt that, as between the between the two brothers, it is Matthew who has, by far, the stronger moral claim to carry on the business of the Farm. It is now apparent to me why he feels justified in saying, as he did a number of times during cross-examination, "*I am not for sale*".

341. The evidence points all one way. As between these two brothers it is Matthew who deserves to be the successor to the Farm and to carry on the very substantial business which is mainly attributable to his efforts, rather than Daniel's, over the past couple of decades.

342. The basis for that observation appears in my assessment of the impact of all of the factual evidence addressed in Section E above. The evidence of Matthew and Mike Bray was compelling in this respect.

343. Mike Bray's desire to remain neutral in the dispute was clear and understandable. He said he would have preferred to have given his evidence to the solicitors for Matthew and Daniel together. His evidence establishes clearly that Matthew is largely responsible for creating the Farm as it now exists (with the Dairy Unit) and operates. The true position is summarised in the following quote from his witness statement:

> "It was clear to me from the outset, right from my first meeting with Matthew, and then meeting Daniel, that the driving force in the Partnership's business was Matthew. Over the years I have recognised that Matthew has an excellent business acumen. He is hard working and driven. He is, and has been, obsessed with the performance of the Dairy's business that now exists."

344. Mr Bray's evidence (which I have addressed more fully in Section F above) was largely unchallenged.

345. It is no longer necessary for me to make any findings in relation to the purchase of Bearley Farm. The allegation of a breach of fiduciary duty by Daniel in that regard is no longer pursued. I also bear in mind that, by the time this dispute arose, Daniel's view was that the heavy soil at Bearley Farm meant it was an unattractive proposition for the Partnership. Whether or not that is so (and true also in relation to Lot 2 which was purchased by the Parris family partnership) the purchase of Bearley Farm by the Partnership, with yet further substantial borrowing from the bank, might not have proved to be financially beneficial. However, Mr Bray, with his considerable experience and having worked on the figures for the bank, considered the purchase of Bearley Farm to be "*such that it would cause the business to grow and make more profit*."

346. In my judgment, therefore, the contemplated purchase of Bearley Farm, which was not pursued by the Partnership but which would no doubt have been pursued by Matthew had he been the sole proprietor of the Farm, provides another clear illustration of Matthew's clear desire to promote the business of the Farm as compared with Daniel's greater indifference on that front.

347. Matthew's response that he is *"not for sale"* was in relation to the suggestion that Daniel (backed by the Parris family) might well pay more for Matthew's Partnership share than Matthew has offered to pay Daniel. Of course, Matthew's response does not necessarily meet the point that a third party purchaser, under a sale of the Farm on the open market, *might* pay a price which ultimately produces a net receipt for each brother which is greater again than what each might contemplate paying the other. That possibility is to be considered against the valuation evidence addressed below. However, when assessing the 'equities' between Matthew and Daniel, it is a fully justified response.

348. I find that there was a conversation (the 2005/2006 Conversation, as alleged) during which Daniel did say to Matthew that one day he would have to buy Daniel out of the Partnership. I accept Matthew's evidence that this took place at around the time they bought out Willy's interest in the Farm. Willy's exit from the business explains why they had the conversation directed to Daniel also leaving at some point. The fact that they had just had to raise the money to buy out Willy explains why they recognised it might not be for some time. That same fact explains why Matthew referred in his evidence to the need to "*tread softly*" with Daniel. Matthew did not want to upset Daniel in a way that might lead to Daniel's departure at a time when Matthew did not have the financial resources for a further buyout.

349. I also find that the 2005/2006 Conversation took place just after Daniel had told Hayley that Georgina did not want to live at Witcombe and that he would have to move. I accept Hayley's evidence on this point and her evidence that she had a number of conversations with Georgina in which Georgina said she wanted to live in Taunton. They included the conversation, at the time when The Old Dairy was being converted to a home, that Georgina would not want to pay for anything that she could not pick up and take with her.

350. The 2005/2006 Conversation provides the basis for Matthew's expectation that, at the end of the Partnership between the two brothers, he would be entitled to buy out Daniel at a fair price.

351. I accept Matthew's evidence that Daniel gave further encouragement for that expectation by reacting positively to Matthew asking him in October 2021 whether he would like to be bought out. Allowing for the inconsistencies in Daniel's account of this conversation, noted above, I believe that Daniel's own evidence provides some recognition of this encouragement. Matthew acted on the conversation by working with Mr Bray on the figures for a buyout proposal, approaching HSBC for an indication that they would lend him the money, and then making his offer to Daniel on 6 April 2022.

352. Matthew's expectation that he would be able to buy out Daniel, if they could agree upon a price, was only undermined after Daniel and Georgina met Mr Butler on 11 April 2022. Therefore, until that meeting, followed later by Daniel's offer to buy out Matthew in August 2022, the expectation throughout almost the entire life of the Partnership was that Matthew would at some point become the sole successor to the Farm on the (implicit) understanding that he would pay Daniel a fair price to become so.

353. Matthew's claim to a *Syers* order must rest upon the merits of the case for one as those arose during that period, before his expectation came to be undermined. The parallels with a proprietary estoppel claim mean that it is relevant to consider whether Daniel's change of heart produces "harm" (compare *Guest v Guest* at [11] and [70], per Lord Briggs) which the court is prepared to recognise and remedy. As with most proprietary estoppel cases, there is not much purpose in investigating the reasons behind Daniel's recent change of heart when the change itself does not constitute a legal wrong. In the present case, now that the allegation of breach of fiduciary duty in relation to Bearley Farm is no longer pursued, little appears to be gained from doing so when Daniel's current wish to become the successor instead of Matthew (if he can) is not in itself wrongful.

354. That said, the evidence given at trial supports the inference that Daniel's change of heart does reflect the business strategy of the Parris family, or what Hayley described as an attempted "coup".

355. I say that because Daniel's change of heart came about as a result of meeting Mr Butler, the advisor to the Parris family. Very shortly before that meeting Georgina's brother became a co-owner of Bearley Farm and the Parris family partnership (including Georgina) acquired Lot 2. Georgina's evidence about the purchase of the latter was sufficiently confusing and unreliable as to prompt thoughts that there might be some further observation to be made beyond the obvious one. That observation is that, just as Matthew and (at least initially) Daniel had viewed Bearley Farm (including Lot 2) as an attractive addition to the Farm, so too the new owners of Bearley Farm and/or Lot 2 presumably regard the Farm as an attractive addition to their recent purchase of that neighbouring land. Georgina and Peter Parris had attended the meeting with Mr Blundell which led the bank to indicate that it would in principle be prepared to lend Daniel £4m to purchase Matthew's share in the Partnership and related assets. I have already mentioned the questions which Mr Pearce-Smith put to Mr Townsend on the basis of a suggestion that a valuation of the

Farm (including the Dairy Unit) might take account of the circumstances of a 'special purchaser' who might seek to acquire as much land as required to maximise the efficiency of the Dairy Unit.

356. Added to all of that is my assessment about the general character of Daniel's evidence (addressed above) in revealing his demeanour as a witness and exposing his inability to refute and marginalise the efforts of Matthew in building up the Farm which, it seems, the Parris family would like to back him financially in acquiring.

Valuation Evidence

357. I am satisfied that the expert evidence (as updated by Mr Townsend in giving evidence and by Ms Mitchell and Mr Mellor in their supplemental report) provides a reliable indication of what, after payment of the Partnership's creditors, Matthew and Daniel could expect to achieve under the 'waterfall' created by section 44(b) of the 1890 Act.

358. Neither party has sought to challenge the evidence of Ms Mitchell and Ms Mellor.

359. The challenge which Daniel made to Mr Townsend's evidence was essentially that he had ignored the ability for a purchaser of the Partnership's assets – whether that was Daniel or a third party – to put them to future profitable use. Mr Pearce-Smith highlighted the significant and (subject to a dip in 2020 and the year of Covid 19) increasing net profit made by the Partnership in the years since 2016. His point was not to suggest, as a matter of valuation analysis, that Mr Townsend had therefore undervalued by a certain amount, or by an amount within a certain range, but, instead, that the past profitability of the Farm would be obvious to any potential purchaser and therefore might well lead to that purchaser - which could be Matthew, Daniel or a third party buyer including from overseas - offering significantly far more than Mr Townsend's valuation.

360. In a statement of the obvious, Mr Townsend's evidence relates only to the objective assessment of the market value of the Farm (so far as its land and buildings are concerned) and not any wider value which is personal to one or both brothers and which is of no interest to a purchaser in that market. If such personal factors give rise to some recognisable equity then they can only be evaluated by the court and the decision of the majority in the Supreme Court in *Guest v Guest* provides a recent reminder that, in this context, it is generally not sensible to attempt to monetise an equity.

361. I make that statement also having regard to the point made on Daniel's behalf that he says he is prepared to pay more for the Farm than Matthew (though Matthew correctly observes that this is mere assertion when the only higher offer made by Daniel is one that encompassed non-Partnership assets). It is by reference to that suggestion – the higher price to which it is said Daniel would go to get the Farm - that Mr Pearce-Smith urged the court not to make an order which would result in Matthew acquiring the farm "*too cheaply*". He said that result would be unfair.

362. However, the risk of such unfairness through the court permitting Matthew to get a bargain at Daniel's expense (ignoring any 'equity' or claim by Matthew which *might* moderate the court's concern about that risk) should be assessed by what *the market* might pay for the Farm and not with a potential bidding war between the brothers in mind. Mr Townsend has not attempted to price into his valuation that particular bidding war. For the reasons touched upon in Sections C and E above, from a strictly financial perspective (if it were possible to ignore any personal value or 'claim' either of them brings to the calculation behind the decision) neither brother would gain financially against the other by buying the Farm at a price higher than the value set by the court under a *Syers* order. That in my judgment is one reason why it would not be right for Mr Townsend to attempt to put a financial value upon the prospect.

363. In my judgment, therefore, it follows that Daniel's point about the risk of unfairness has to be considered by reference to the prospect that *a third party purchaser in the market* would pay significantly more than the valuation which is sought to be relied upon for the price payable under the *Syers* order. If there is real uncertainty about that then, subject to any equity which moderates its concern, the court should probably let the market decide what the partnership assets are worth, even where one party is entirely disinterested in what his own share might be worth in terms of cash. However, the proper evidential assessment required of any court indicates that it needs to identify the basis for such concern. In short, that the valuer has missed something.

364. Expressed that way, it becomes clearer that Daniel needs to identify the respect in which Mr Townsend's evidence was deficient. Mr Pearce-Smith did not quite express it in these terms but the thrust of his questions to Mr Townsend and of his submissions to me was that the valuation of the Farm should either have been based upon or at least reflected the enterprise value of the Farm's business.

365. In my judgment, any such suggestion is unsound.

366. When Matthew was cross-examined about the profits he would be able to continue to make with the Dairy Unit, he responded by saying: "*Is that just not a fact of life?*" and that if the valuers had provided a figure then it was not for him to play with it.

367. In my judgment. Matthew's response was a justified one. He might also have observed that if he borrows in the order of several million pounds to buy out Daniel, as he proposes, then the Partnership's level of profitability over recent years may not provide an accurate indication of the future net returns for him. Yet further very substantial bank borrowing would have to be serviced out of the Farm's income, at the expense of profits. As Matthew's counsel observed, profits are earned by taking risks. By way of illustration, they referred to Matthew's evidence about the potential implications of some of the herd testing positive for TB in October 2023.

368. There is, however, a more fundamental problem in the way of any suggestion, made in quite general terms, that Mr Townsend has missed a key element in his valuation. That is that (allowing for the suggestion on behalf of Daniel at the PTR that the valuation reports were "irrelevant") there was no hint of one before the trial.

369. As Mr Jourdan KC highlighted in his closing submissions in reply, Daniel's position going into the CMC in this case was that there needed to be a valuation of the land

and other assets of the Partnership. There was no suggestion at that stage that there needed to be a separate (or different) valuation of the Partnership's business. It was by reference to the parties' position at the CMC that the court's order dated 22 May 2023 gave permission for Mr Townsend, as single joint expert, to give evidence upon "the real estate assets of the Partnership". Daniel agreed to Mr Townend being the named expert having received the valuation report he had prepared for HSBC in January 2022 and which Matthew had used as the basis of his £3m offer to Daniel. As with his report to the court, Mr Townend's report dated 22 January 2022 confirmed that he had not included any value for the 'going concern' element of the Partnership's business. It made also express reference to the "*enhanced level of profitability*" of the Dairy Unit which was referable to scale and innovative design features.

370. As Mr Jourdan observed, there was no suggestion on behalf of Daniel that Mr Townsend should prepare his expert report on a different basis or that the court should receive evidence from a business valuer.

371. This case is not of course one about the valuation of shares in a company where its enterprise value of the business might be valued by reference to an EBITDA multiple fixed by reference to other comparable transactions or company valuations in the relevant sector.

372. Mr Jourdan KC and Ms Fairley said in their closing submissions that, taking the value of the Partnership's assets, excluding cash, of approximately £11m as at 30 September 2023 (reflecting the expert valuations) then "*to get to that sort of figure on the basis of an enterprise valuation and applying a typical multiplier of 3-5 you would need a business producing EBITDA of something like £2.2m - £3.65m and that plainly is not this case.*" Mr Jourdan recognised that this was a 'back of the envelope' attempt to illustrate Matthew's point though even that is probably more than the court can expect when any attack by Daniel upon the principle of Mr Townsend's approach was neither adequately signalled or sufficiently developed (in evidence and argument) for the court to attach any weight to it.

373. For example, because there was no evidence on the point, I do not know whether Matthew's submissions correctly identify a range of typical multipliers for a large-scale dairy farming business of which there are only a handful of the type in this country. They may well do. I have greater doubts as to whether an EBITDA multiples method would be appropriate for determining the enterprise value of an unincorporated business of the present type. I say that because the business's future profitability is so heavily related to the debts and/or working capital that any new owner brings to it (so that the past operating costs may not be a reliable indicator of future ones even if the past revenue might be) and when there may be a question about an inherent volatility of the business's profitability for the purpose of applying a method which, so I understand, is appropriate where stable profits in the past and a lack of volatility in market conditions means that profit multiples are a good indicator of value. In relation to that second point, I refer below to the Farm's milk supply arrangements in the context of considering what in the present type of case is the more familiar concept of partnership goodwill.

374. Mr Townsend's response that, despite regular discussion with his colleagues upon the general point, his valuations of the present type do not seek to reflect the profitability

of the farming business was perhaps therefore unsurprising. In any event, the fact that he had considered it further demonstrates the soundness of the valuation method he has adopted. In his expert opinion, he has missed nothing.

375. Because this case concerns a partnership rather than a company, and the valuation had been of the Farm's assets, at the trial I asked Mr Townsend about his approach to goodwill having regard to its highly profitable performance over recent years. I have touched on the potential significance of a firm's goodwill (so far as concerns any stake the party resisting *Syers* relief may have in goodwill of potential value) in addressing the *Syers* jurisdiction in Section E above.

376. As noted in Section F above, Mr Townsend confirmed that his valuation did not involve the valuation of the Partnership's business as a going concern and therefore did not include any additional value attributable to goodwill. To the extent that Daniel's challenge to the valuation could be said to rest upon omission of the intangible asset of goodwill (and, in fairness, to Mr Pearce- Smith, this was my own surmise as to where that challenge might lead) I would also regard that as unfounded.

377. In my judgment it is difficult to see a basis for concluding that Mr Townsend should have included a value for goodwill in his valuation.

378. The business of the Farm is nothing like the practice of a professional firm, such as a firm of solicitors, accountants or stockbrokers (cf. *Hammond v Brearley*), or like that of a professional tradesman, whose reputation – usually associated with a name of long-standing in the relevant locality – is such that it has an established client or customer base. Goodwill has been said to be easy to describe but difficult to define. However, the essence of it is that the business's reputation is such that will attract new business from both existing and new clients. If the business has such goodwill then a purchaser of the business will pay a value for it which reflects the fact that he is not starting from scratch.

379. The Farm is not able to offer any purchaser such an equivalent customer base. It has one customer whose allegiance to the business is currently regulated by the terms of a contract which exhaustively defines its loyalty to the Partnership (and to each member of it should either want to carry on its business on his own). I suppose it is possible that the Farm might in the future contract with one or more bulk purchasers of milk but, however many contracts it may have in respect of its dairy output, any purchaser of its business will immediately see that the value of its custom is only as good as length of (and the commercial benefit to the Farm inherent in the terms of) its contractual arrangements. If the contract is terminated (including by the Farm if its terms come to be commercially disadvantageous) then all that is left is the Farm's assets with which the purchaser has to start from scratch in acquiring new custom.

380. The Partnership's current Milk Producers Agreement with Saputo is dated 1 May 2022. I note that its terms provide that it is not assignable by the Partnership without the prior written consent of the other. Saputo is under an obligation not to unreasonably withhold consent to an assignment by the Partnership where the proposed assignee is "*a Family Member who takes over ownership or management of the Farm*". The agreement is terminable on 12 months' notice by either party and not less than 7 days' notice if the Partnership wishes to retire from dairy farming and no family member wishes to continue milk production. If, however, a family member

resumes milk production from the Farm within 12 months then the agreement will be deemed not to have terminated.

381. Those provisions in the present agreement with Saputo highlight the difficulty in attempting to put any value on the Partnership's business over and above the value of the land, buildings, livestock, machinery and other tangible assets with which it carries on that business.

382. In *Bahia v Sidhu*, at [37], Andrews LJ said the "*extraordinary feature*" in *Hammond v Brearley* was that the partner seeking to wind up the partnership through a sale had no interest in its goodwill. For my part, I would not rely upon the point that both expert evidence and my own analysis indicate that any sale of the Farm on the open market could not include a sale of its customer base (i.e. could not sensibly identify goodwill as an intangible asset of marketable value) as an "exceptional circumstance" in the *Bahia v Sidhu* sense. Instead, I rely upon that point in concluding that the terms of the *Syers* order sought by Matthew are eminently fair in proposing that Daniel should receive out of the Partnership all that the valuation evidence reliably indicates he would receive if its assets were put up for sale.

Conclusion on the Exercise of Discretion

383. In the light of those conclusions upon the evidence I have no doubt that Matthew is entitled to the *Syers* order which he seeks. To use the words of Evans LJ in *Toker v Agul*, it is the appropriate order in this appropriate case.

384. This conclusion is reinforced by the fact, as I find it to be, that it produces the result contemplated by Matthew and Daniel in the conversation which took place in the last year of the Partnership's life. I refer to the October 2021 conversation and Daniel's positive reaction to the idea that the time had come for Matthew to buy him out. Obviously, they did not reach a binding agreement or even fix upon a price but, if the price payable under the *Syers* order is a fair one, Daniel's reaction at that time provides a strong indication that the result I have decided upon is indeed fair and just.

385. Mr Pearce-Smith's core submission (echoing the language of Andrews LJ in *Bahia v Sidhu*) was that there was nothing unfair in what Daniel was proposing: it will achieve financial fairness between the parties. In my judgment, that submission not only makes too much of an assumption but is also flawed by a crucial oversight. As Matthew disputes the submission and does not wish to avail himself of the financial benefit suggested by it, I focus upon it from Daniel's perspective. As Matthew said of himself, "*I am not for sale*". It is Daniel who says that says a *Syers* order will be unfair to him.

386. The element of assumption in the submission is that a third party will pay more for the Partnership's assets than either Matthew or Daniel would, so that "*each will receive a substantial sum of money*". The expert evidence does not support this assumption. Despite having a full opportunity to suggest the contrary, in both his initial instructions to Mr Townsend and in the later cross-examination by Mr Pearce-Smith, Daniel did not manage to cast any doubt upon the reliability of his evidence as to their market value. Mr Townsend recognised that there might be a purchaser who would

pay more than his valuation figure but the figure reflects his assessment of the likelihood of that. It also reflects the likelihood that the offers in the market may fall short of his figure.

387. Mr Pearce-Smith referred in his supplemental closing submissions to there being a "*realistic possibility*" that a third-party will wish to buy the Farm and do so at a price in excess of the valuation. On the evidence before the court there is just as realistic a possibility that there will be no such purchaser, or only one who is willing to add to Mr Townsend's record for quite accurate sales predictions, or perhaps pay more than his valuation figure but not by so much that it overtops the additional costs of sale (or the consequences of any other financial "baggage" a sale might bring with it).

388. I have expressed the assumption in the submission that way because Mr Pearce-Smith also said that the selling partner (whether that is Matthew or Daniel) would also benefit from receiving more money from the buying partner if he comes to be outbid. Again, the assumption is, or at least should be, that the successful bid is at a figure which (allowing for sale costs and any other financial consequences of a sale) is *higher* than the price indicated by the expert evidence.

389. I have already explained how, looking at matters purely from a financial perspective as the court did in *Bahia v Sidhu* and Daniel wishes to do, the court is not concerned to give Daniel a bargain at his brother's expense. That would be the result of him buying the assets at a *lower* price than that indicated by the expert evidence. However, as I have also explained by reference to the tractor example (paragraph 96 above), if Matthew and everybody else thinks it is worth no more than £50,000, then Daniel's suggestion that it is "worth" more than £50,000 because he (Daniel) is willing to pay £75,000 does not bear scrutiny. If his bid is genuine, rather than made in the hope that Matthew will buy it for £76,000, it will result in a bad bargain for Daniel. Matthew, I repeat, is not interested in the upside for him and the suggested "fairness" of that result (it would actually be unfair as between the parties) urged by Mr Pearce-Smith. A valuer undertaking a "Red Book" valuation (see paragraph 324 above) would presumably give no credence to the additional £25,000 "value".

390. In any event, the crucial oversight in Mr Pearce-Smith's submission is that it focuses only upon what appears in the Partnership's balance sheet at the end of its life. Although Mr Pearce-Smith recognises that the facts between the two cases are very different, he seeks to put this case in the same category as *Bahia v Sidhu* which was only concerned with monetising the partnership's assets and ensuring that (after deduction of clearly quantified debts) they were shared fairly between the partners. The submission pays no regard to any equity which one partner may have acquired against the other, during the course of the Partnership, which has no clear monetary value but which is sufficient to provide grounds for concluding that a liquidation of the assets would work an injustice.

391. Mr Pearce-Smith submitted that to disregard the potential unfairness of a *Syers* order to Daniel would be unfair. Clearly, the court will not set out to make an order which is unjust though it needs to be mindful to guard against the risk it might unwittingly end up doing so. The submission therefore requires me to identify the reasons why the facts of the present case meet the bold assertion within it.

392. If it necessary to summarise the basis of my decision on the facts of this case, for the purpose of adding a fifth example to those given in *Bahia v Sidhu*, at [44], and with the language of the third and fourth examples given by Andrews LJ in mind, then the "*exceptional circumstances*" justifying that conclusion can be summarised, albeit rather lengthily, as follows:

> "The equal partners in a partnership at will have, since its inception, shared an understanding that one partner would himself carry on the business when the partnership eventually comes to an end, by being permitted to buy out the other partner at a fair price to be determined at that end point, and that partner has devoted himself accordingly to the firm's business and its development in anticipation of that event. The understanding is sufficiently clear from the dealings between the partners and the subsequent reliance upon it (throughout the life of their partnership) sufficiently identifiable and substantial to support the conclusion that it would be unfair and inequitable for the other, at the partnership's end, then to insist that both partners' shares in the partnership assets should be liquidated through their sale. Any consideration of the "detrimental" nature of the first partner's reliance ("*the partner has devoted himself accordingly*") must make allowance for the fact that the relationship between the partners arises out of their shared endeavour in making profits and that he has benefited equally from any profit during the life of the partnership; and also that any unequal injections of capital will be reflected in the partners' respective capital accounts. Nevertheless, the court is entitled to consider his individual efforts in developing the partnership business and to do so with particular focus upon a comparison with the business as it was at the partnership's inception and the relative efforts of the other partner in that regard. The understanding and reliance upon it give rise to an 'equity' in the first partner which may operate to prevent the liquidation of the partnership's assets if the court concludes that, in all the circumstances, an order for sale would be unfair and unjust. Other factors, such as the likely adverse impact a sale may have on third parties (including employees of the business and others whose financial interests may be damaged by a sale) or upon the business's customer base, may feed into the court's assessment of the equity in deciding what is fair and just. The court is entitled to act upon the equity where expert valuation evidence supports the conclusion that the price payable under the *Syers* order is equivalent to what the other can reasonably have expected to receive for his own share. The likely costs of a sale and any potential adverse tax consequences resulting from a sale may be factored into the court's comparison of the two. The court may act upon the equity despite any suggestion by the second partner that he would be willing to pay more for the first partner's share than is offered in return, as the price of himself carrying on the business, and notwithstanding the prospect that such a sale *might* have produced a greater financial return for him than that indicated by the valuation evidence accepted by the court."

393. The 2005/2006 Conversation between Matthew and Daniel took place at the inception of the Partnership (with the October 2021 conversation in effect affirming their understanding in the last year of its life). I recognise that there may be other cases where the relevant understanding was reached at a later stage in the life of the partnership and thereafter acted upon in a way which gives rise to the equity.

394. In my judgment, Matthew has established such an equity and the court should not be dissuaded from acting upon it by reference to Daniel's opposition to it. By the end of the trial, with any evidential basis for Daniel's alternative case for a *Syers* order in his favour having largely evaporated, this opposition really rested on points about money: compare the concluding sentence in the above paragraph summarising the basis of the *Syers* order in this case.

395. Before picking up my final observations on the valuation evidence I should mention three further factors which support that conclusion. They are mentioned in my summary of Matthew's case in Section C above. The first represents a factor already identified in the long summation above of the "*exceptional circumstances*" of this case. I would regard the other two as more incidental to the equity in this case, and reinforcements of the exercise of the discretion to act upon it, though I can see that in another case, where the evidence was to establish the detrimental consequences of a sale with more certainty, they might be added to make such a summary even longer.

396. The first factor is the likely tax consequences for Matthew and Daniel if the assets are sold on the open market. Mr Jourdan KC and Ms Fairley said an open market sale will lead to both parties having to pay a substantial amount of income tax in respect of the sale of the Partnership's livestock, deadstock, plant and machinery. This would not be the case if a *Syers* order is made. In the case of the livestock and deadstock, income tax will be payable on the difference between cost (as recorded in the accounts) and the sale price. In the case of plant and machinery, capital allowances have been claimed, writing down their value. If the machinery and equipment is sold then income tax will be due on the difference between the sale price and the written down value. They referred to some notes prepared by Old Mill Accountants referring to potential tax liabilities of £373,500 and £470,000, respectively, if the Farm was to be bought by a third party.

397. The second factor relates to the position of Mrs Gill Cobden in her capacity as 75% shareholder of CIL which, through CFL, owns the dairy herd. I have referred in Section C to Matthew's evidence about the current TB restrictions which means the Farm is presently unable to sell or move animals off it unless for slaughter. If the farm is sold to a purchaser with their own herd then the Partnership and CFL will have to conduct a fire sale of a large number of animals over a short space of time. As I observed during Mr Pearce-Smith's closing submissions, even a purchaser without a herd would be in a strong bargaining position. Mr Pearce-Smith said there would be a negotiation but, on the face of it, the purchaser would have CFL over a barrel. Unless the herd restrictions are lifted prior to a sale the animals will have to be killed and sold for meat. The purchaser would know that they only have to offer a bit more than the fire sale price to buy the animals. That is not what they were bred and raised for and would be financially disastrous. Even if TB restrictions are lifted, so that the animals could be sold to dairy farmers, there is a concern that such a large quantity of cows over a short period of time is likely to depress the price significantly.

398. The third factor concerns the potential impact of a proposed sale on the farm workers. Mr Townsend said that a sale of a farm typically takes 6 to 9 months. As a matter of comment sense (and for judicial notice) it is likely that a sale of the farm might well lead to staff retention issues if workers on the Farm consider their longer-term employment is likely to be somewhere else. Staff departures would present a real problem and might well mean the end of the business before the sale was completed.

If there is no-one (or not enough persons) to look after the herd it would have to be sold. If the business were to cease there would be no income to service the HSBC loan or for Matthew and Daniel.

399. I note that Mr Butler's letter of 13 April 2022 mentioned the need for Mrs Cobden's thoughts and wishes would be relevant and that she "*has a certain amount of protection as I am sure that neither you nor your brother would want to see your mother's position adversely jeopardised.*" The letter also said it would be sensible to inform Mr Cox of Old Mill Accountants "*to give you input and as I say, to determine your tax position*." So far as the evidence before the court shows, Daniel does not appear to have taken these points further. The submissions made on his behalf at trial certainly did not engage with the points made by Matthew on these matters. The lack of engagement with the apparently disadvantageous tax consequences of a sale was a notable omission in an argument which was essentially all about the amount of money the brothers (or one of them) might take away from the Partnership if its assets are sold.

400. Pausing there, these further points that arise for consideration could hardly highlight more clearly the difference between this case and the relatively straightforward issue in *Bahia v Sidhu* concerning the fairest and most obvious way of disposing of an unexceptional portfolio of mixed commercial and residential properties. I now return finally to further consideration of the valuation evidence which is a key element of the proper exercise of the discretion and which Daniel, relying upon the Court of Appeal's decision in that case, says, in effect, has become marginalised.

401. I have dealt above with Daniel's challenge to the valuation evidence of Mr Townsend. In my judgment, the testimony of Mr Townsend at trial, including his revision of the land value since the date of his report, only served to reinforce the reliability of his evidence as to what the land and buildings might be expected to achieve on the open market. It also established that, if the Farm it was to be sold, then Matthew and Daniel would suffer the impact of selling costs of £120,000 plus VAT, or more, on the sale of the land and buildings. There would of course be further costs incidental to the sale of the livestock and deadstock. Again, the argument on behalf of Daniel was silent in relation to these costs.

402. Mr Pearce-Smith also relied upon the greater financial resources available to Daniel through Georgina and her family. However, although Matthew cannot refute the fact (if it be one) that Daniel is able to "*out-muscle him financially*", as Mr Pearce-Smith put it in closing submissions, neither can Daniel seek to make any great virtue out of the fact if Matthew does not want to sell to Daniel, at any price, but is willing to buy Daniel's share at a fair value.

403. That is especially so if Daniel's financial "muscle" comes (as the evidence indicates it must do) from the Parris family. If the Parris family are willing to pay more for the Farm than anyone else (including Matthew) could or would be prepared to pay then that must either be because of their desire to provide personal support for Daniel in his future farming life or because of their recently acquired interest in Bearley Farm and/or Lot 2, or, perhaps, a combination of each of those interests with the family deciding how much each of them feeds their appetite for doing so. However, a third party purchaser in the open market has neither of those interests. Each of them is therefore irrelevant to the court's assessment of the market value of the Farm. I have

explained above the reasons why Daniel cannot in my judgment seek to inflate the value of his own Partnership share by referring to the depth of his own pockets.

404. For the purpose of comparing the outcome between equal partners under the section 44(b) 'waterfall', the fact that one of them is prepared to outbid the other for an asset of the Partnership does not produce any benefit for the bidder in strict financial terms. The price of preserving his own share at the value he has put upon it, over and above the value indicated by the other's highest bid and possibly more than the asset is truly worth, is such that he effectively shares any gain with the other partner. If his higher bid is a genuine one, rather than simply an attempt to increase the price ultimately to be paid by the other party (compare *Malik v Hussain* at [33]), then the other partner will benefit from the buying partner being prepared to pay more. But that is only the case if he, the other partner, viewing things in purely financial terms and regardless of any competing equity he may have, is prepared to sell.

405. In this case Matthew does not want to sell, either to Daniel or anyone else. He relies upon matters which give him a personal 'stake' in the Farm which goes beyond the purely financial. I have addressed them above in my conclusions upon the factual evidence.

406. Matthew has established his equity on the evidence and he is entitled to ask the court to act upon it so as to prevent each partner's entitlement under the waterfall being tested by a sale on the open market. As explained in Section C above, it is not possible to put a value on the equity when court's recognition of it through a *Syers* order means that the value of the partnership assets will never come to be tested by such a sale. It *may* be that the personal stake which supports the equity has no positive monetary value: an observation illustrated by Matthew's preparedness to give Daniel the benefit of the doubt on Mr Townsend's 5% margin of tolerance.

407. Mr Pearce-Smith submitted that the case was really all about achieving financial fairness between the parties. Matthew does not wish to sacrifice his own and what he hopes is his children's future on the Farm for the additional value that his share might realise on a sale to Daniel or to some other purchaser (at a price greater than the value taken as the basis of his offer to Daniel) so it is only necessary to ensure that, in deciding upon a remedy which is fair and just, the court has taken full account of the *chance* of Daniel doing better financially on a sale to an outside purchaser.

408. I am satisfied that the valuation evidence in this case does provide a reliable indication of market value of the Partnership's assets and that the making a *Syers* order in reliance upon it does not involve an unwarranted gamble with Daniel's prospects under the usual form of winding up. Recognition of (a) Matthew's willingness to add the 5% margin of tolerance to the valuation figure (b) the significant saving in the costs of sale provides further reassurance in this respect. Although the claims (or all of them) had yet to be formulated, tried and (to the extent successful) valued, there is also the point that Matthew has indicated he is willing to give up the claims in negligence against Daniel if a *Syers* order is made. To the extent any of those claims were well-founded then any liability of Daniel to the Partnership would have formed the basis of a deduction under section 39 of the 1890 Act as implemented in the usual way.

409. Although there was no challenge to the valuation evidence of Ms Mitchell and Mr Mellor, it is obvious (as the differences between their September 2023 and May 2024 reports illustrate) that the Farm's cattle numbers, feed stocks and growing crops fluctuate quite significantly over relatively short periods of time. However, a line has to be drawn at some point and Mr Jourdan KC and Ms Fairley on behalf of Matthew submitted that a valuation date (for all the Partnership's assets including those valued by Mr Townsend) of 20 May 2024, the first working day following the conclusion of the trial, was appropriate.

410. I agree that is the proper approach to be adopted where the court has available at the trial up-to-date valuation evidence, for the purpose of deciding whether or not to make a *Syers* order, and the alternative would simply be to kick the valuation/accounting 'can' down the road.

411. At the PTR, when Mr Pearce-Smith raised a point about the expert evidence being already out of date, I remarked upon the almost inevitable (certainly usual) time-lag between the date of the expert reports, including any statement of agreement/disagreement between rival experts, and the later date of trial. The directions made at the PTR were aimed at ensuring the parties were not prejudiced by the delay between the two. I also then remarked upon the inevitable time-lag (in any case of complexity such as this one) between the conclusion of the trial and the handing down of judgment. The trial having finished, the parties cannot do much to control that further period of delay.

412. Although the parties did not expect even a draft of my judgment on the Monday following the trial, if the court is to make a *Syers* order on the basis of the valuations before it at trial then it is obviously important that it gives its decision as soon as practicable. Otherwise, there is a risk of prejudice (to either party) in the can not being kicked down the road when perhaps it should have been. By adopting the date of 20 May 2024 for what, in effect, is the exercise of putting numbers to the section 44(b) waterfall (the starting point now being the value of the Partnership assets instead of their proceeds of sale) I have therefore been mindful of the need to minimise the period of delay between trial and this judgment, so far as other court commitments have permitted.

413. My acceptance of Mr Townsend's evidence meant that, adopting (a) the median of £175,000 for his estimated range of increase in land values between August 2023 and trial and (b) Matthew's concession that Daniel should be given the benefit of Mr Townsend's 5% margin of tolerance, the land and buildings are to be valued for the purpose of the order at £8,037,750. In his counsel's closing submissions Matthew offered to round this up to £8,040,000 and I will therefore act on that higher figure.

414. There is in my basis no justification on the facts of this case to act upon the 15% margin of tolerance contained in Savills' report of January 2022, as Matthew recognised I might do as part of the exercise of my discretion. As Mr Townsend confirmed, and the reference in that report to the 15% figure (in section 5: 'Loan Security') shows, that figure reflects part of Savills' guidance to lenders for the purposes of them undertaking their own risk assessment. The January 2022 report also reflected a discount of 15% (20% for the Dairy Unit) to reflect the assumption of a restricted 3 month marketing period. That assumption did not feature in his expert report for the court.

415. It is Mr Townsend's evidence to the court which I should act upon in the exercise of the discretion to make a *Syers* order. To the extent there is doubt over about the likely discrepancy between Mr Townsend market value figure for the land and buildings and what they would actually sell for - and that is a doubt which arises not out of the reliability of his opinion but because it is an opinion – then Matthew's offer to add the 5% meets it. It must be borne in mind that Matthew's offer could be worth an extra 10% over what Mr Townsend believes is "*effectively the same*" market value.

416. In relation to Mr Mellor's crop valuation, Matthew's counsel also recognised that the completion date under the *Syers* order was likely to take place at a time when the crops currently growing have matured. Matthew therefore proposed that the higher August 2023 figure of £1,122,306 for fodder and standing crops should be used in place of the May 2024 figure of £646,944. Otherwise, the figures to be adopted from the May 2024 reports by Ms Mitchell and Mr Mellor are £660,319 (livestock), £707,300 (tractors and vehicles) and £509,820 (machinery and equipment). These valuations come to a total of £2,999,745 which (given that the August 2023 total was over £3.093m) I propose to round up to £3m.

417. The valuation of the Partnership's property (before incumbrances) for the purposes of the *Syers* order is therefore £11,040,000.

H. DISPOSAL

418. In the Appendix below I have reproduced the draft *Syers* order prepared by Mr Jourdan KC and Ms Fairley but without their original references to the now abandoned negligence claims which Matthew had contemplated would produce an adjustment in the price payable to Daniel.

419. I will make an order in those terms with the inclusion of the asset value of £11,040,000.

420. This judgment will be handed down remotely by email to the parties' legal representatives and uploading to The National Archives. The handing down will be adjourned for the purpose of preserving the time for filing any appellant's notice and I will make a direction in relation to the filing of any such notice under CPR 52.12 at the next hearing to determine any consequential matters arising out of this judgment.

APPENDIX

The form of *Syers* Order

Recitals

A. In this Order, the following expressions have the following meanings:

a. "The Partnership" means the partnership between the Claimant and the Defendant

b. "The Valuation Date" means 20 May 2024.

c. "The Syers Dissolution Accounts" means financial statements recording: (1) the profits or losses of the Partnership in respect of the period from 1 October 2023 to the Valuation Date; (2) the value of the assets and liabilities of the Partnership on the Valuation Date; (3) the amount due to the Defendant in respect of his capital and share of the profits or losses, assets and liabilities on the Valuation Date. The Syers Dissolution Accounts are to incorporate the values of the livestock set out in the supplemental report of Sally Mitchell dated 1 May 2024, the values of the tractors and vehicles, machinery and equipment and fodder and standing crops set out in the supplemental report of Tom Mellor dated 1 May 2024, and the current value of the land and buildings belonging to the Partnership as determined by the Court in the Judgment, namely £[INSERT FIGURE IN THE LIGHT OF THE JUDGMENT].

d. "The Defendant's Share" means the amount shown as due to the Defendant in the Syers Dissolution Accounts.

e. "The Payment Date" means 10 weeks after the date on which the Syers Dissolution Accounts are provided to the Claimant.

f. "The Completion Date" is the date on which the Claimant pays the amount specified in paragraph 3(a) of the Order below and delivers the documents specified in paragraph 3(b) of the Order below (or if those things are done on different dates, the later of those dates). However, the Completion Date cannot occur unless both of those things have been done by 5 pm on the Payment Date.

IT IS ORDERED:

1. It is declared that the Partnership was dissolved on 25 August 2022 and is to be wound up as directed below.

2. The parties are to forthwith instruct Old Mill Accountants to prepare the Syers Dissolution Accounts and to provide them to the parties.

3. The Claimant may at any time up to 5 pm on the Payment Date:

   (a) pay the Defendant the Defendant's Share; and

   (b) deliver to the Defendant documents by which HSBC plc releases the Defendant from liability for the amounts owed by the Partnership to HSBC plc.

4. If the Claimant has done both of those things by 5 pm on the Payment Date, then on the Completion Date the Claimant will become the owner of the Defendant's equitable interest in the Partnership assets and:

   (a) The Defendant will then at the request of the Claimant execute any documents reasonably required to transfer legal title to the Partnership assets to the Claimant.

   (b) The Claimant will indemnify the Defendant in respect of any liabilities incurred in relation to the Partnership assets after the Completion Date.

5. If, by 5 pm on the Payment Date, the Claimant has not both paid the amount specified in paragraph 3(a) above and delivered the documents specified in paragraph 3(b) above, then:

   (a) All the assets of the Partnership are to be sold on the open market with both parties having permission to bid.

   (b) The sale shall be conducted by an independent solicitor acting as receiver, to be agreed between the parties or in default of agreement determined by the Court on the application of either party.

   (c) The solicitor shall consult the parties as to the method of sale and have regard to any representations made.

   (d) Following completion of the sale, the independent solicitor will instruct Old Mill Accountants to prepare accounts of the Partnership as at the date of completion of the sale of the last of the Partnership assets to be sold ("the Sale Dissolution Accounts").

6. The parties have permission to apply for directions in relation to the working out of the above provisions of this Order, including how the sale is to be conducted if either party

disagrees with the proposals of the independent solicitor, and including variations to the above provisions if circumstances make that appropriate.

7. [Costs]

8. This order is to be served by the Claimant on the Defendant.