

Neutral Citation Number: [2015] EWHC 1384 (Ch)

Case No: A30CF008

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
CARDIFF DISTRICT REGISTRY**

Port Talbot Justice Centre
Harbour Road, Port Talbot

14/05/2015

B e f o r e :

HIS HONOUR JUDGE MILWYN JARMAN QC

Between:

EVAN JAMES LLOYD DAVIES

Claimant

- and -

**DAVID JOHN LLOYD DAVIES
THOMAS PETER LLOYD DAVIES
ELLEN DAVIES**

Defendants

**William Batstone (instructed by Agri Advisor Solicitors) for the claimant
Malcolm Warner (instructed by Llys Cennen) for the defendants
Hearing dates: 11, 12 and 13 May 2015**

HH Judge Jarman QC :

1. This is a dispute between members of the Davies family, which has farmed at Fferm Gwarcefel Prengwyn Llandysul (the farm) for generations, as to the beneficial ownership of the farm. Tom and Ellen Davies brought up their five children, David (now 60 years old), Peter (58), James (the claimant, 57), Margaret (56) and Huw (51), on the farm. For ease of reference and with no disrespect intended I shall refer to the children by their forenames.
2. Their father died aged 76 on 31 May 1999. He and his wife had made a number of wills with substantially similar provisions in respect of the farm, the first of which in evidence were made in 1996 and the last made on 29 January 1999 (the 1999 wills). By the latter, their two older sons were appointed executors of their fathers will, and in that capacity they are made first and second defendants in the proceedings.

3. In essence, by the 1999 wills the farm was left on trust for James until he reaches the age of 60 or dies earlier and subject thereto on trust to sell and divide the proceeds into five shares, one each for their other children and the fifth share for James' children.
4. James claims that that is contrary to oral promises made by his father and assented to by his mother that if he worked on the farm it would eventually go to him. The first time such an assurance was given, he says was in 1974 when he was 16 years of age after he had finished his GCSE examinations at school and was contemplating his future. While they were working together on the farm, he says that his father said to him in Welsh that as he was the one who was helping if he "came home the place is yours." James says that at that time he had not started in the sixth form at school but was going back to re-sit some of his examinations. He says that during these months his father repeated in conversations between the two that the "farm would be mine if I came to farm it." He says that he eventually agreed, and after re-sitting his examinations decided to go to agricultural college on one day a week and work on the farm. From time to time, his father would repeat that he James would have the farm after them, such as when he was late for milking. When he became a partner his father said that this would make it easier to pass on to him when his father retired. In 1984 his parents together with David and Huw who were then living at home, moved out of the farmhouse into a bungalow which had been built on the farm, leaving him, James living alone in the farmhouse. James says that on being given the keys to the farmhouse by his father the latter said in Welsh "There we are then, it is all yours now. You have done a good job." His mother who was present then said "Good luck to you James."
5. James' wife Cindy also gave evidence that a short time after she had moved into the farmhouse in 1988 her future father in law one day when he was in the kitchen with her told her in Welsh that James was working well on the farm and would have it after him. Cindy in cross examination accepted that she was surprised at this, as James had not mentioned this to her. She then asked him if it were true and he said yes.
6. It is accepted that there were no other witnesses to such promises, that no-one was told about them at the time and that there is no confirmation in writing. Nevertheless, James says that in reliance upon promises made from 1974 he worked on the farm rather than pursue another career such as a police officer, and did so for long hours at low wages with his father for the next 10 years or so. After his parents' semi retirement then he relied on the promises to carry on working long hours on the farm, largely on his own, and ploughed profits back into it by carrying out improvements costing in the region of £177,000 over the years. He says that he was unaware of the contents of the wills until 2012 when he was given a copy of his father's 1999 will by his brother Peter.
7. Accordingly his primary case is that it would now be unconscionable for the promises not to be kept, and that the beneficial interest in the farm belongs to him as a result of the doctrine of proprietary estoppel. That doctrine is based on three elements, a representation or assurance made to a claimant, reliance on it by the claimant, and detriment to the claimant in consequence of his reasonable reliance: see for example, Lord Walker in *Thorner v Major* [2009] UKHL18. However, as the same judge had earlier said in *Gillett v Holt* [2001] Ch 210 when a Lord Justice of Appeal, the doctrine cannot be treated as subdivided into compartments, and that the fundamental principle which permeates all elements is that equity is concerned to prevent unconscionable conduct. "In the end the court must look at the matter in the round," as the judge concluded.
8. It is understandable that his siblings should now question whether such promises were made, when they knew nothing of them until 2012. Their mother, who is the third defendant in these proceedings and who still lives in the bungalow, is now in her mid-eighties. She is so distressed that the dispute has come before the court that this has affected her health and she was not well enough to attend court. Her written statements were admitted into evidence, in which she says

that she was not aware of such promises. She says that whilst her late husband was very much in charge of the farm and could be quite domineering, he would have told her of any such promises but she would not have agreed to them because she felt this would not have been fair to the other four children. All witnesses agree that both of the parents were honourable people, not given to going back on his or her word. Indeed, the issues arising in this dispute apart, that was the preponderance of the evidence in respect of the children too, which was confirmed by the impression I gained of each. James' siblings say that had such promises been made, then they would have been adhered to, and that their parents would not have made wills in the way that they did.

9. It is easy to assert such oral promises when the person making the promises has passed away, when the only other witness is elderly and not available to give oral evidence, when there is little contemporaneous documentation and none that directly refers to such promises. It is right in those circumstances that the assertions should be treated with care and even suspicion.
10. James and his wife were each cross examined robustly about the promises on the basis that each was making up this part of his or her evidence. Indeed, it is not easy to be mistaken about whether such assurances were made or not. Each in my judgment responded in a way which came across as considered, somewhat reserved, clear and succinct. There was nothing in my judgment in the demeanour of either of them to suggest that he or she was seeking to mislead the court. There were some inconsistencies in respect of details such as precise times and places, but in my judgment these are not more than to be expected of a witness trying his or her honest best to recall conversations some years before.
11. However, there are other inconsistencies relied upon on behalf of the defendants, mostly notably between the evidence of James and what he said in a long letter to his siblings in October 2013 after the dispute had arisen and after he had sought legal advice, in which he said that his father pressed him to leave school to farm in partnership and also that both his father and mother told him that as he would inherit the farm he could change the system of farming. He also said that his father never praised him for his work. Furthermore, it is somewhat surprising that neither he nor Cindy at any stage before the dispute arose told anyone of the promises.
12. Indeed, James in his evidence said that he did not even tell Cindy about them, nor a previous girlfriend who lived with him for a short time, nor his brother Peter to whom he was particularly close at this time. When Cindy later gave her oral evidence, she said that she had asked James after her conversation with his father whether it was true and she was told it was. That was not in her statement. That is another inconsistency which is relied upon on behalf of the defendants.
13. It follows in my judgment that it is right to test the impression given in oral evidence by the inherent likelihood of circumstances surrounding the alleged making of the assurances. There is a large measure of agreement about such circumstances.
14. It is not in dispute that from an early age it was James who showed more interest in farming than his siblings. The five children worked on the farm growing up and as young people. By 1974, David had left home to continue his education. Peter had obtained full time employment away from the farm but continued to live on the farm and carried out some work at home and he and James were close at this time. James says that at this time although he was interested in the farm, he also thought of joining the police, as he had friends who were thinking of doing so or had fathers who were police officers. However he did not share this with the family at this time and on behalf of the defendants, such an interest is now questioned. This part of his evidence, although given in a reserved manner as most of his evidence was, nevertheless came across as genuine. It is not that surprising in my judgment that he would not share it with the

family, of which, the preponderance of the evidence shows, father was "the boss." I accept this part of his evidence.

15. Margaret at this time was a year or so behind him at school and left at 16 to pursue a nursing career. Huw was only just in secondary school, and was later to leave at 16 years old to become eventually a building contractor.
16. Their father at this time was in his early 50s and fit for his age. The farm, which consisted of the farmhouse, buildings and about 87 acres of land, had a modest milking herd, a flock of sheep and a few fat cattle. The herd needed milking twice a day and at this time the feeding, milking and cleaning out was done by hand. His parents had been tenants of the farm but he had through hard work been able to buy it initially with his mother and sister with a loan. This was paid off and he bought the others out. He had acquired agricultural plant such as a caterpillar and a combine harvester which he contracted out. He had a particular interest in engineering and in building and flying model planes.
17. An insight into his state of mind around 1974 was given by a neighbouring farmer and friend David Jacob, who was called to give evidence on behalf of James. In my judgment he was a particularly impressive witness. He said that the two of them would help each other with jobs on their respective farms and that he would visit the farm about once a month depending upon the season and would sometimes have meals there. He recalls that James was showing more interest than his siblings in the farm and that his father was "over the moon" when he went to agricultural college and told him James would inherit the farm. He so confided on occasion, using the word "inherit," in the presence of his wife, Ellen. Mr Jacob said that both seemed excited that James was taking over the business and it appeared that this is what they both wanted.
18. The only evidence which cast doubt on this was that of Huw, who says he does not recall Mr Jacob visiting the farm or having meals there. That in my judgment is not surprising given that Huw did not leave school until four or five years later. It was also suggested on behalf of the defendants that it is unlikely that there should be this level of confidence, when nothing similar was mentioned to James' siblings at this time. However, it is often easier to confide in a close friend than to deal expressly with the rather difficult issue of inheritance with children who may feel left out. Given his domineering personality, I do not find it that surprising that his father would choose to confide in a friend in this way without talking about the matter to his other children. I accept this part of Mr Jacob's evidence. It does not necessarily follow that James' father made the promises to him at this time as he claims, but it does in my judgment give some support to that claim.
19. The evidence of Mr Jacob does not stop there. He went on to say that the issue of planning permission for the bungalow came up and that Tom Davies told him that he wanted to retire. If he could get such permission he intended to retire to the bungalow and so James could inherit. He mentioned that James could in due course retire to the bungalow if any of his children were interested in carrying on the farm. By a deed of gift dated 15 September 1976 the farm was transferred by Tom Davies into the names of himself and his wife, but he did not tell James as, in the words of the latter "that was the sort of man he was." In April and June 1977, he sold two building plots adjoining the farm road and retained the proceeds, without protest from James. James says that he assumed he was doing this for his pension, and that until he handed over the farm his father was still the boss. It is suggested on behalf of the defendants that this tends to show that it is unlikely that he had given the claimed assurances to James. However James was still quite young, it is not suggested that this amounted to a significant interference with the business of farming the farm, and in my judgment it is more likely to be an indication of the sort of man his father was.

20. A few months later in July 1977, the local branch secretary of the Farmers Union of Wales wrote to the local planning authority on behalf of Tom Davies saying that he was seeking permission for a single bungalow on the farm adjacent to the farm road so that he could withdraw from the farmhouse and make way for his son to take over the farm in due course and that given good health expects to "assist his son for many more years."
21. At about this time Tom Davies approached the local councillor and farmer, Thomas Jones, who also gave evidence on behalf of James. Mr Jones said that he asked for help in obtaining planning permission for a bungalow on the farm as he was ready to retire and to hand the farm to James as he was the only one interested in farming, but not before he obtained permission for the bungalow into which he and his wife could move. He was proud that James was keen to farm. In cross examination, whilst Mr Jones accepted that these conversations were looking to the future, he also maintained that he clearly understood that Tom Davies was giving the farm to James. Mr Jones was again, in my judgment, an impressive witness and I accept his evidence.
22. The brother and sister of Ellen Davies also gave oral evidence on behalf of James that his father made similar expression of his intention to them, as did another witness John Thomas in written evidence only. This gives a little further limited support to a finding that this was indeed his intention at this time. I accept that it was, particularly on the evidence of Mr Jacob and Mr Jones.
23. The planning committee of the local planning authority resolved to give such permission on 19 July 1978. By a letter to the director of planning dated the next day, Tom Davies' agent indicated that he had decided to defer development of further adjoining plots due to the cost of the site road. It was stated in that letter that the proposed bungalow was required for an agricultural worker, namely his son "who assists in the operating" of the farm. It was suggested on behalf of the defendants that that indication is inconsistent with the intention I have found. In my judgment, insofar as it is, it was made in the course of seeking planning permission and is not sufficient to displace the impression gained on the oral evidence before me. In the event the permission was issued without an agricultural tie. Two further plots were sold in similar circumstances in 1981 and 1982.
24. From 1975 until about 1979 James worked about 80 hours per week for payment of £30 net per month rising to £50 per month plus board and lodge and the provision of a motorbike. He was attending agricultural college one day a week during this period. By contrast David in 1975 was earning £30 per week gross as a bank employee and was spending £15 per week board and lodge. A few years after James had started work on the farm, some labour saving systems were installed with his encouragement, such as a milking parlour, silage facilities, and slurry pit. These allowed for easier management of the herd, but it also led to an increase in the number of the herd. James' work there remained I am satisfied, long and hard, and much more so than for example that of David.
25. By 1979 David was taking accountancy examinations and prepared accounts for the partnership. A VAT receipt from that year shows James as a partner and the accounts for year end March 1980, show James as a partner with a modest capital account and a third share of profits, subsequently rising to one half. I am satisfied he continued to work long hours and that the work was hard. He says he vaguely recalls his father explaining then that by introducing him as a partner in the business it would make it easier to pass on to him upon his father's retirement. However he was not involved in the finances of the business at the time and he cannot recall any more than that about entering in the partnership. As far as he was concerned, he continued to draw £50 per month until 1984.
26. The bungalow was built in the early eighties with the assistance of skilled workmen but with James and his father each contributing substantially to the building without extra recompense.

There was a dispute as to the precise contribution of each. By now James was in his mid twenties and his father approaching 60 years of age. It is likely on the preponderance of the evidence that James' contribution was more of a manual nature and that of his father more of a supervisory nature but each was significant.

27. By the time that the parents moved with David and Huw to the bungalow in 1984, Margaret had married and moved from home. Peter married that year and left home. David returned home to live until he married in 1990. At the time of the move to the bungalow David was pre-occupied with the final accountancy examinations. Whether or not the disputed words were said on the occasion of the family leaving James in the farmhouse, in my judgment it is significant that he was left to live there by the rest of the family and that it is likely that the keys to the farmhouse were then handed over as he says.
28. At his father's request James made payments of £80 per month initially, rising to £120, from the partnership account to his parents' private account. It is not in dispute that these payments were very much lower than a market rent for the farm. From then on, the decisions in relation to farming were left to him. It is clear that he worked hard and the business was profitable. He commenced works to renovate the farmhouse and to build new farm buildings and other improvements. He costs these at just over £177,000 until the dispute arose. These are substantially accepted. David in his oral evidence said he recalled seeing documents that a renovation grant of some four or five figures was paid in respect of the farmhouse, although he said he could not be sure of the figures. That appeared to be genuine and I accept it. He could not recall any resurfacing to the farm road which James says he spent £4000 having done. There are not invoices for all of this work, and for the same reason David questions the sum of £21,000 which James says he spent on a chicken shed. In the end I am satisfied that substantially all, if not all, of the payments which James says he paid in this regard were made as claimed.
29. I am satisfied that his parents until 1999, and his mother thereafter knew of and either agreed to or did not object to such improvements. In my judgment this is a significant factor.
30. David also said in his oral evidence that he advised his father to obtain independent advice in relation to the tax implications of retirement and death, but his father would not take this advice. Accordingly he continued to prepare the partnership accounts, and he did so he said with a view to minimising the amount of tax to be paid and by utilising his parents' personal allowance. There was no accountancy evidence before me and James accepts that accountancy is not his strong point. In a revealing part of his evidence in cross examination, David said that he did not discuss how he dealt with these matters in the accounts with either his father after he refused to take independent advice, or with James. He said neither would understand.
31. The accounts show transfers from the capital accounts of his parents to James amounting to over £50,000 between the period of 1987 and 1994. Both James and Cindy say that shortly after she moved into the farmhouse in 1988, David came over to the farmhouse with a completed set of accounts and over tea discussed those with the two of them. They say Cindy asked about the transfer as shown and he explained that that was because James was to inherit the farm and that as he was having the farm he should not expect any money. James says that was in line with his understanding of the arrangement. David's recollection is that there was no such discussion and says that it is made up. However, he also said that whilst he could not remember Cindy asking any questions about the accounts it was a long time ago and that he could hardly remember. In my judgment this part of the evidence of James and Cindy had the ring of truth to it and I prefer their recollection on this point. This ties in with his evidence that his father in his mother's presence told him that they were transferring bit by bit each year so as to avoid a large tax bill on death.

32. This also ties in with the fact that the accounts show gifts from the parents' capital accounts or as drawings to their other children, namely £2000 to Peter in 1987, £1000 each to Margaret and Huw in 1990 and other such gifts in 1995 and 1996. They accept these and other gifts were made from time to time. For example, Peter accepts that his father bought him a car in 1987 but wanted a promissory note in respect of it. When Peter questioned this, his father told him that it would come out of his inheritance. On behalf of the defendants, it is said that this shows his father wanted to treat his children fairly. Another example is that Huw accepts that the £1000 shown in the accounts might have been given to him by his parents as a deposit to buy his local authority house which he worked upon and sold for a profit. He accepts that they also helped him by giving him £2,000 for a plot of land upon which he built a home.
33. It is common ground that for the first few years after Cindy moved into the farmhouse, her relationship with her future in-laws was good. After the birth of their first son in 1993 the relationship became cold and by the time that she and James got married in 1997 had deteriorated to such an extent that his father was unhappy about the marriage so the couple decided to get married without guests. It is clear from diaries kept by Tom Davies that he felt that Cindy bossed his son and did not care for him or the farm. It is not necessary for me to decide who if anyone was to blame for this deterioration, but it is significant in my judgment that for whatever reason this view of Cindy had been formed by him.
34. It was in this context that the first wills were drawn up in 1996, and in my judgment it is likely that his decision as to the provisions of it was informed at least to some extent by his worsening relationship with his future daughter in law. Just a few days after the subsequent wedding he instructed solicitors to write to his son in these terms:
- "This letter is to notify you that the rent on the property will increase from the current £120 a month to £200 a month effective from the 1st December 1997. If this is not acceptable we are instructed to obtain a proper valuation of the farm to ascertain the current market value of the property. Our client is also considering charging for the water supply at the property which you currently benefit free of charge."
35. When James was cross examined about this, he accepted that he did nothing about this letter and that his father did not mention it to him. He thought his father had instructed solicitors out of anger and was showing who was boss. He appeared to accept also that this letter raised in his mind the possibility of his father wanting to sell the farm, but he said nothing more was said or done about it. It is suggested on behalf of the defendants that the fact that the father caused this letter to be written, and the lack of response by James to it shows that it was unlikely that any such promises were made or that if they were this was clearly showing his father no longer regarded himself as bound by them. I do not accept that. It is likely that the letter was written at the time when he was upset about the wedding, and nothing more came of it. Objectively read, the letter is at least as consistent with valuing the property for rental purposes than for sale, and the reference to imposing water charges suggests a continuation of James farming there.
36. Both James and David say that they knew or assumed that their parents had written wills but did not know the contents. Peter and Huw say that their father indicated to them that they would have a fifth share. Huw says that this was in the last two or three years of his life. I accept that at this time their father did give Peter and Huw at least a hint of what he had provided in his wills.
37. In 1998 James' parents retired from the partnership and again David was responsible for dealing with this in the accounts. James says that his father came to the farmhouse and out of the blue said that he wanted the remaining share of himself and his wife out of the partnership and asked for £8,000. He mentioned that Huw wanted money to buy a building plot. James and Cindy paid £8000 in cash out of personal savings and Cindy drew up an agreement dated 13 February recording that fact. James says that at this point he believed that all land and assets, apart

possibly from the stock, had been transferred to him. I accept their evidence in this regard. David in his evidence explained how he dealt with these matters in the accounts and appeared to accept that there were no outstanding matters in respect of the partnership. Insofar as the contrary is asserted I am not satisfied that there are.

38. By the time his father died, all of his children still got on with one another. No one mentioned the will. David and Peter accept that at their mother's request they did not proceed then to obtain probate and that accordingly they let "sleeping dogs lie." They understood that their mother was concerned that if probate were progressed there may be a family row and that she was particularly worried about not seeing James' children. In her statement she says that she did not particularly agree with the provisions in the wills but went along with her husband's wishes. It is suggested on behalf of James that this is probably because she was aware of the promises made. However, even if no such promises were made, the provisions of the will in a situation where James had farmed the farm since leaving school did in my judgment risk upset in the family. Given that those provisions allowed him to carry on farming until he reached the age of 60 in my judgment it is not proper to infer from his mother's view of those provisions or from her stance on the death of her husband that this was because she knew that the claimed promises had been made.
39. James and Cindy recall that a valuer came round to value the farm after his father's death, and accept that the impression given to him was that James had a tenancy of the land. James says that this was in response to a question from the valuer as to whether he paid rent to which he replied yes. He accepts he did not mention the promises, and says it was not he who used the word tenancy. I accept that evidence, and I do not accept that this is inconsistent with the promises he now asserts. The exercise was merely one of valuation, and he was responding to questions asked of him. As indicated, my impression of him was that he is reserved by nature.
40. In the alternative to the proprietary estoppel claim, a tenancy is now asserted in favour of a company to which James on advice has assigned any such tenancy. It is agreed however that this should not be dealt with in this judgment. If James does have a beneficial interest, this alternative claim falls away. If he does not, this can be asserted by the company, which is not a party to these proceedings, in due course if needs be.
41. James and Cindy also say that the valuer raised the issue of improvements and suggested that they keep written records of improvements. I accept that evidence. Cindy drew up lists of past improvements which James' mother signed at his request and signed subsequent authorities for improvement, such documents being dated 2000, 2003 and 2102. At one stage in these proceedings there was an allegation of forgery because David says his mother told him she had not signed some of these documents. It is now accepted, after expert evidence was obtained that she did, and David says she must have forgotten.
42. Some time after their father's death, David and Huw visited James at the farm to deal with the issue of improvements and made reference to needing permission to carry any further improvements out. Huw became agitated and the situation became heated and James asked them to leave. Huw also recalls mentioning the provisions of the will to James at this time and in particular as to his leaving the farm at the age of 60. James says this was not mentioned and David cannot recall it being mentioned. I am not satisfied that in the heat of the moment it was mentioned, or at least not in a way which would make it clear to James what the provisions of the will regarding the farm were. It is suggested on behalf of the defendants that merely by mentioning the need for permission to improve the farm that this should have brought home to James what the position regarding inheritance was or might be, but I do not accept that such a reference in these circumstances did have or should have had this import. In my judgment it is likely that James had no knowledge of the provisions of the will until 2012. Accordingly there is nothing in the suggestion that he elected to accept the provisions of the 1999 will.

43. Margaret says that when the dispute then arose, James and then Cindy telephoned her. He asked if she remembered their father saying that he would have the farm and asked her to sign, she supposed he was referring to her share, to him. Cindy asked the same thing. They do not recollect this but accept that there were conversations and say that Margaret indicated that he could have the farm if she and her other brothers could have the money. She accepts that she may have said that he could have the farm on the basis that she and her other brothers were paid out. On this latter part, it is likely that there was a misunderstanding about this. Otherwise, in my judgment she gave her evidence in a clear detailed and vivid way and I prefer her recollection.
44. In my judgment, looking at matters in the round, I should focus upon the period up until 2012 when James found out the provisions of his father's will. Weighing up all of the above matters, the balance of probabilities favour the account of James as to the promises made by his father and assented to by his mother. It is clear that his father was keen to keep the farm in the family and that James was the most likely candidate to promote this aim. Although he was very young when the promise was first made, it was at the time when young people have to make a choice about their future. Although he was very keen on farming, it is understandable why his father wished to maximise the chance of James coming to work on the farm, and continuing to do so, and should want to make his aim in this regard clear to him. It is also understandable that he should find it more difficult to discuss this with his other children who had chosen or were likely to choose other paths in life. James' evidence about his father repeating the promise in reminding him of his responsibility when he turned up late for milking after playing football, and of the exchange upon leaving the farmhouse in 1984, had a particular ring of truth.
45. Although his father's conversations when confiding his future hopes to others naturally focused on the future, in my judgment the conversations which I accept he had with James as the latter claims, clearly and unambiguously assured James that if he came to work on the farm, which dealt with the then and there, then the farm would be his. The conduct of his father and mother, and indeed of David and Peter after their father's death as set out above, in my judgement also gave assurance to James that he would inherit the farm after his parents' death.
46. Mr Warner on behalf of the defendants realistically accepts that once that finding is made, there is a presumption that James relied upon those promises and that it is sufficient if the assurance is one factor in such reliance. In my judgment on the evidence the promises and conduct amounted to a clear thread which played a significant part to a greater or lesser extent, and reasonably so, in each of the important decisions which James made in relation to the farm, right up until 2012.
47. I am also satisfied that James has relied upon those promises and that conduct to his detriment, by passing up a career in the police, by working initially for long hours at low pay, by working on the bungalow, by carrying out improvements to the farmhouse and farm as outlined above, buying nearby land in 2001 and by working in a way which benefited his parents until the partnership ended in 1999. Countervailing benefits must be taken into account. He initially enjoyed board and lodge and other benefits. Since 1984 he has earned a good profit from the farm which has enabled him to buy the nearby farmland and an investment property. However, without a beneficial interest he will have to retire from the farm in a couple of years time.
48. In my judgment there is a substantial balance of detriment which makes it unconscionable now for the provisions in relation to the farm set out in the 1999 wills to take effect. I doubt very much whether Tom Davies regarded those provisions as unconscionable and he was always in the difficult position of balancing his strong desire to keep the farm in the family with a desire to be fair to all of his children. In my judgment it is likely that he thought he was behaving honourably. It is likely also that his wife has simply forgotten the promises made as she had forgotten signing the documents referred to above. Viewed objectively and in the round, I have come to the conclusion that it is unconscionable to deny James an equity in the farm.

49. The principles of valuing such an equity were reviewed by the Court of Appeal in *Jennings v Rice* [2002] EWCA 159; [2003] 1 P&CR 8, starting with *Crabb v Arun District Council* [1976] Ch.179. As a result of that review Aldous LJ at paragraph 36 said:

"There is a clear line of authority from at least *Crabb* to the present day which establishes that once the elements of proprietary estoppel are established an equity arises. The value of that equity will depend upon all the circumstances including the expectation and the detriment. The task of the court is to do justice. The most essential requirement is that there must be proportionality between the expectation and the detriment."

50. Walker LJ at paragraph 45 referred to cases of a consensual character where expectations and the element of detriment will have been defined with reasonable clarity and gave the example of a carer who has the expectation of coming into the benefactor's house either outright or for life. At paragraphs 50 to 52 he said:

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

But that does not mean that the court should in such a case abandon expectations completely, and look at the detriment suffered by the claimant as defining the relief. Indeed in many cases the detriment may be even more difficult to quantify, in financial terms, than the claimant's expectations. Detriment can be quantified with reasonable precision if it consists solely of expenditure on improvements to another person's house, and in some cases of that sort an equitable charge for the expenditure may be sufficient to satisfy the equity... But the detriment of an ever increasing burden of care for an elderly person, and of having to be subservient to his or her moods and wishes, is very difficult to quantify in money terms. Moreover the claimant may not be motivated solely by reliance on the benefactor's assurances, and may receive some countervailing benefits (such as free bed and board). In such circumstances the court has to exercise a wide judgmental discretion.

It would be unwise to attempt any comprehensive enumeration of the factors relevant to the exercise of the court's discretion, or to suggest any hierarchy of factors."

51. He went on to express the view that those factors include, but are not limited to, misconduct, that the court cannot compel people who have fallen out to live peaceably with one another, alterations in the benefactor's assets and circumstances, the likely effect of taxation, and to a limited degree the other claims (legal or moral) on the benefactor. Towards the end of his judgment at paragraph 56 he agreed with the observation of Hobhouse LJ in *Sledmore v Dalby* (1996) 72 P&CR 196 that to recognise the need for proportionality

".. is to say little more than that the end result must be a just one having regard to the assumption made by the party asserting the estoppel and the detriment which he has experienced."

52. In the more recent Court of Appeal authority *Suggitt v Suggitt* [2012] EWCA Civ 1140, a father had assured his only son that he would inherit farm land as well as somewhere to live, in reliance upon which he had carried out some limited works on the farm with free board and lodge and some of the profits. The judge found that the son had "positioned his whole life on the basis of the assurances..." and that his father did not want to see his son homeless. The judge awarded the son the farmland and a house worth some £760,000. There were other

substantial monies in the father's estate. Arden LJ, giving the lead judgment dismissing a subsequent appeal, cited paragraph 50 of the judgment of Walker LJ in *Jennings*, and then said this at paragraph 44:

"In my judgment, this principle does not mean that there has to be a relationship of proportionality between the level of detriment and the relief awarded. What Walker LJ holds in this paragraph is that if the expectations are extravagant or "out of all proportion to the detriment which the claimant has suffered" the court can and should recognise that the claimant's equity should be satisfied in another and generally more limited way. So the question is: was the relief that the judge granted "out of all proportion to the detriment" suffered?"

53. In concluding that it was not, Arden LJ referred to the finding that the father did not want his son to be homeless, and expressly took into account the value of the farmland and the house before concluding at paragraph 50:

"However, the fact is that, on the judge's findings, the assurances were made and the values only reflect the assurances."

54. Bearing those principles in mind, in my judgment to award James the whole of the beneficial interest in the farm is not out of all proportion to the detriment suffered. However that begs the question whether the bungalow for these purposes should be regarded as part of the farm. It is clear from *Thorner v Major* that what constitutes a farm in such a context can alter from time to time, and in certain circumstances a bungalow built on a farm might well be regarded as part of parcel of it for the purposes of giving relief.

55. On the facts of this case however, I have come to the conclusion that to do justice between the parties, the equity should not extend to the bungalow. That would be out of proportion. My reasons are these. Whilst it is clear that Tom Davies intended to build a bungalow to which to retire, and envisaged that James might do the same in due course so as to allow any of his children interested in farming to occupy the farmhouse, it is significant that this latter part was not communicated to James in the promises made. The bungalow was not built until 1981, and although it might well have been envisaged by James at the outset that such a provision might be part of the retirement plan, other plots were sold off by his parents from 1977 to 1982 without seeking his approval or sharing the profits. Part of the detriment suffered was his work on the bungalow, but this also assisted him to have the farmhouse for himself and later his family.

56. It is also significant in my judgment that on handing him the keys to the farmhouse in 1984, what his father said was that "it is all yours now." This in my judgment is reasonably to be taken as referring to what was being left and handed over, namely the farm and the keys to the farmhouse. The rest of the family were withdrawing to the bungalow, and thereafter James occupied the farm and the rest of the family occupied the bungalow.

57. As to what limited weight should be given to other moral claims, I have already found that their father did also seek to do justice to his other children. Each of those has their own homes and has had his or her own career, and none says that he or she is particularly needy. There are other assets in the estate, although far less than the value of the farm even when the valuation of some £260,000 at the date of death is taken into account. It is far more valuable now, due to a significant extent to the improvements which James has continued to make and his continued hard work. His siblings also have a reasonable expectation of inheritance from their mother, and although precise details of her position is not before me, her assets are likely to be relatively modest compared to the farm.

58. It is not suggested that there are any insurmountable impediments to the bungalow being in separate ownership. It may be sensible for all concerned for James in due course to purchase

the bungalow, but that is a matter upon which each must take his or her own advice. James is at present continuing to make a monthly payment to his mother and in my judgment it is just as part of the equity which I have found that he should continue to do so for her life.

59. I shall hear counsel further on consequential matters.