



Neutral Citation Number: [2020] EWHC 939 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
PROPERTY TRUST & PROBATE LIST (ChD)
BEFORE:

HIS HONOUR JUDGE MARK RAESIDE QC (Sitting as a Judge of the High Court)

Between :

(1) MR MATTHEW WILLS
(2) MR JAMES WILLS

Claimants

- and -

MISS CLAIRE LOUISE SOWRAY
(AS BENEFICIARY AND PERSONAL
REPRESENTATIVE OF THE ESTATE OF THE
LATE ANTHONY SOWRAY DECEASED)

Defendant

Hearing date: 3, 4, 5, 9 & 10 March 2020

Date handed down: 15 April 2020

I direct that, pursuant to CPR PD 39A para 6.1, no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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JUDGMENT

Introduction

1. This case is brought by two brothers Matthew Wills and James Wills as the First and Second Claimants (“Matthew”) and (“James”), who seek equitable relief under the principles of proprietary estoppel in respect of a farm known as Gilmoor Farm, Bishop Thornton, near Harrogate (“Gilmoor Farm”), owned until he died intestate by their lifelong friend Anthony Sowray (“Tony”), against his only daughter Claire Sowray who became his personal representative and the beneficiary of his estate and is the sole Defendant (“Claire”).
2. This case is fact sensitive and applies the legal principles of proprietary estoppel as agreed between counsel for the parties.

The pleaded case

3. The Particulars of Claim, Defence and Reply including the Further Information may be shortly summarised. I will consider the details of the pleaded case below when I consider the case of Matthew, James and then Claire.

(1) Particulars of Claim

4. On 25 June 2018 a Claim Form attaching Particulars of Claim settled by Stephanie Jarron was issued by Matthew and James against Claire seeking the following relief; (1) an order that Claire will transfer to Matthew the land and farm buildings at Gilmoor Farm, (2) an order that Claire will transfer to James the freehold interest in a small plot of land on which he has his home at Gilmoor Farm, or (3) such order as the courts thinks fit to satisfy the equity created in Matthew and James's favour under the rules of proprietary estoppel thus effectively leaving Claire only the farmhouse at Gilmoor Farm.
5. Tony died on 11 February 2017 intestate and until his death lived in Gilmoor Farm which consisted of approximately 50 acres comprising grazing land, a farmhouse and various barns and outbuildings. Matthew and James are brothers and long-term friends of Tony.
6. Matthew occupies those 50 acres of land and farm buildings and James occupies a small plot of half an acre where he lives with his wife in a log cabin. For most of her life until approximately six years before Tony's death, Claire and Tony were estranged.
7. On many occasions between 1990 and Tony's death he represented (of which five are listed) to Matthew that he could use the land as he liked while he was alive and that he would leave the land to Matthew when he died. Matthew relied upon the representations and to Tony's knowledge acted to his detriment (of which six are listed) and as result Matthew asserts an estoppel which prevents Tony's assets from passing in accordance with the rules of intestacy to Claire.
8. James and Tony made an oral agreement in about 2012 and James gave his jeep in return for Tony leaving a small plot of land to James, alternatively Tony represented

to James that if he gave his jeep to Tony, he would leave the plot of land on his death. James relied upon the representation to Tony's knowledge and acted to his detriment (of which four are listed) and James asserts that an estoppel arises preventing the plot of land from passing in accordance with the rules on intestacy to Claire.

9. Further Information has been provided.

(2) Defence

10. The Defence dated 27 July 2018 was settled by Chris Royle.
11. The relief set out in paragraph 4 above is denied by Claire.
12. The facts set out in paragraph 5 above is effectively admitted by Claire.
13. Claire admits that Matthew and James have on occasion cut grass or hay off some of the land for their purposes and benefit but otherwise did not occupy the land or actively work the land and admits that James occupies a log mobile home but otherwise paragraph 6 above is denied.
14. Claire asserts that up until his death Tony farmed the land and received the Rural Payments Agency payments.
15. Claire denies she was estranged from Tony and lists four matters relied upon in relation to their relationship.
16. Claire asserts that Tony intended Gilmoor Farm to be hers on his death and lists six matters relied upon.
17. Claire puts Matthew to strict proof of the representations in paragraph 7 above and denies that those representations were sufficiently clear and unequivocal or were taken sufficiently seriously and/or could be relied upon to give rise to a claim in proprietary estoppel.
18. Claire denies James' case on representation in paragraph 8 above and asserts the transfer of the Jeep was in lieu of rent.
19. Both Matthew and James are put to strict proof of reliance and detriment.
20. Claire asserts that at all material times; (1) both Matthew and James were licensees of Gilmoor Farm, (2) used Gilmoor Farm for their own purposes and benefit alternatively the use was in lieu of rent, (3) that Matthew and James have both asserted their status as tenants, and, (4) Tony complained to friends that they have not paid rent.
21. Further Information has been provided.

(3) Reply

22. Matthew and James deny that they were either tenants or licensees of Tony.
23. The approach I have taken to the parties pleaded case is generally in accordance with UK Learning Academy v SSE [2020] EWCA370 that a party should be held to their pleaded case, but I can allow a departure where it is just to do so for both parties.

Trial and trial bundles

24. In accordance with the orders of Goldberg DJ who has carefully managed this case throughout there are two trial bundles; the first comprises pleadings, orders and witness statements and a single joint expert report, the second a variety of contemporaneous documents.

25. In addition to the witness statements of Matthew and James they provide 4 further witnesses, originally from John Brown, David Thomson, Susan Kellett, and Brian Fawcett and then Sarah Wills.
26. In addition to her witness statement Claire provides 15 witness statements, originally from Robert Hague, David McFarlane, Raymond Ford, Marianne Everett, David Hall, David Rever Thomson (to distinguish him from the Claimants witness above), Michael Trenholme, Anthony McTague, Alison Knights, Stephen Rimmer, Glenda King, Eric Broadwith, Elizabeth Morgan, Michael Webster and Martin Humberstone, and then Richard Gouldsborough.
27. There is a single joint expert report on valuation from David Peat of George F White dated 17 January 2020.
28. This trial was originally set down for six days and a reading day, though it has taken five days as not all witnesses needed to be called. I ensured that both counsel had sufficient time to examine Matthew, James and Claire.

The party's skeleton arguments

(1) The Claimants

29. The Claimant's skeleton argument settled by Stephanie Jarron is dated 26 February 2020 and largely follows the Particulars of Claim she settled. It sets out Matthew's and James' case separately by reference to; (1) representation or assurance, (2) detriment, (3) reliance, and (4) representations become irrevocable in Matthew's case, and proceeds in both the cases with the minimum equity to do justice. The award sought for both Matthew and James follows the relief sought in the Claim Form and Particulars of Claim which is quantified for Matthew in the sum of £330,000 including £25,000 for the farm buildings and for James at £30,000. Lastly it deals with Matthew and James as tenants of Tony.
30. The law relied upon for proprietary estoppel essentially cites the three important decisions in which Lord Walker (as he became) was involved; *Thorner v Major* [2009] UK HL 18, *Gillett v Holt* [2001] Ch 210, and *Jennings v Rice* [2003] 1P& CR 8 which have subsequently been shortly summarised by Lewison LJ in *Davies v Davies* [2016] EWCA 463.
31. The representations rely upon what Tony said generally and orally in 2000, 2001 that Matthew would get Gilmoor Farm when Tony died and was changed in 2011 to give Claire the farmhouse and James the small plot of land. In James's case it is an oral agreement to give the jeep to Tony in return for the small plot of land in about 2012 which was confirmed orally by Tony that it would be in his will in 2013.
32. The detriment comprises the work that Matthew did on the farm which comprised digging and repairing, rotavating, de-stoning and spraying, repairs to the farm buildings and fencing, making hay, buying farm equipment to do these jobs, looking after Tony by providing food and doing his washing. In James's case apart from giving Tony the jeep the detriment was buying and installing the log cabin as their home, arranging electrical connections from the farmhouse.
33. The reliance in Matthew's case is the time and cost expended on the land and in the case of James reliance can be inferred from the detriment.
34. In Matthew's case only it is said the representations became irrevocable by the time Tony became reconciled to Claire.
35. In both cases the minimum equity to do justice to Matthew and James is said to be not out of all proportion to the detriment they suffered.

36. The case on Matthew and James's tenancy turns on legal advice in 2017 they received which resulted in an unauthorised solicitor's letter which neither of them approved.

(2) The Defendant

37. The Defendant's skeleton argument dated 26 February 2020 now settled by Bruce Walker and somewhat unusually (but maybe understandably as this is a fact sensitive case) attaches a long Appendix reviewing the evidence in support of Claire's case.
38. In addition to the common ground on proprietary estoppel in *Thorner v Major* (supra) and *Davies v Davies* (supra), reliance is placed on section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 and the need for writing in contracts that leave land by a will which are otherwise void relying on *Cobbe v Yeoman's Row Management* [2008] 1 WLR 1752 per Lord Scott at paragraph 29 viz "proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement which statute has deClaired void.", and the countervailing benefits and expiration of equity viz *Sledmore v Dalby* (1996) 72 P&CR196 per Roch LJ and, on the minimum equity to do justice *Crabb v Arun DC* [1996] Ch 179 per Scarman LJ and *Moore v Moore* [2018] EWCA 2699 per Henderson LJ.
39. In support of the denial of estrangement Claire's case relies upon documentary evidence set out in the Appendix which shows a strong bond with Tony at least since 1990 and that she would inherit Gilmoor Farm.
40. There are four arguments against any representations by Tony to Matthew; (1) inconsistency with the instructions he gave to his previous solicitors, (2) that Tony was still farming and Matthew was using the farm buildings and taking hay as payment in kind, (3) the lack of any documentary evidence and contradictory documentary evidence in support of Claire, and (4) at least four of the five representations in the Particulars of Claim are not promises to leave land by will, and the fifth is disputed that Tony would only leave the farmhouse to Claire.
41. Matthews' case on detriment fails because the single joint expert considered the work worthless, he was obtaining a benefit from the land and can keep his own machinery, and there is no documentary objective evidence as to the work relied upon by Matthew.
42. Matthew's equity has expired as he had free use of the land for 20 years, he has not improved the land according to the single joint expert and should not be awarded land worth £330,000 and this would not achieve the minimum equity to do justice and Matthew has failed to produce any evidence of spending money on Gilmoor Farm.
43. In James's case section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 precludes a proprietary estoppel case for his small plot of land.
44. There are three arguments against any representations made by Tony to James; (1) it is inconsistent with the instructions given to his solicitors, (2) the true relationship between Tony and James for the jeep was in payment of outstanding rent, (3) the documentary evidence is strongly against any representations and there is no document to support James's case, and (4) James's case is unclear in any event.
45. James case also fails on detriment as he was paying no rent for the small plot and apart from giving Tony the jeep the rent was worth more, the log cabin is a mobile and can be removed and there is no evidence to support James's work on the land and the sheds can be removed.
46. Any equity that James may have has expired and the minimum equity to do justice is provided by the rent-free period and James has failed to provide any evidence to quantify his equity.

Parties closings

47. The party's oral closings largely followed their skeleton arguments. In essence Stephanie Jarron simply submitted that now Michael and James had plainly given honest evidence I should accept their case and grant the relief sought. Bruce Walker took me in some detail and analytically through the Appendix to his skeleton argument which he augmented by reference to the evidence of the witnesses and some further documents and maintained that this formed the basis of Claire's success in this case.

Background facts from the record

(1) Gilmoor Farm

48. The correct name is Gilmoor Farm despite the parties' use of different words.
49. The title documents in YK129647 held at HM Land Registry indicates that on the 23 December 1985 there was a conveyance of adjoining land owned by Sarah Harrop as vendors to Francis and Mary Sowray, Tony's parents. On 22 February 1989 the freehold land formerly of Bose Green Farm was registered to Gilmoor Farm. Tony became the proprietor of Gilmoor Farm on 16 December 2004. The original land enclosed red on the attached plan shows two fields only not what became five fields.
50. Mr Robson of Robson Little (chartered surveyors) carried out a valuation of Gilmoor Farm on 12 May 2017 for the purposes of probate on Claire's instructions and it is specifically referred to and attached by Claire in the HM Revenue and Customs document of houses and land buildings and interest in land. The farmhouse is a 17th-century long house of stone construction under a slate roof. The buildings are a mix of traditional and more modern materials there are two large stone barns under slate roof both in particularly poor condition (walls and roofs) and the buildings of more modern construction are almost all in very poor condition with the exception of one barn near the farmhouse which is a steel portal frame with tin sheet cladding. The land extends to 55.3 acres (which is all fenced) and is slightly falling away to the east and predominantly grass some of which has been cropped for silage with the remainder in poor condition being rough grazing with whin bushes evident in places. The area has not had fertiliser or lime added for some years. There was no applicable woodland. Attached as a rural payments agency Basic Payment Scheme (BPS) 2016 dated 6 February 2017 in the sum of £4,444.92 on the basis of a gross value of 20.79 for the basic payment scheme and a similar value for the payment for greening payment being £3613.29 and £1602.05 respectively. For the purpose of probate Gilmoor Farm was valued at £593,000 with vacant possession and the farmhouse at £150,000 and had an income of £3,950 the Basic Payment Scheme.

(2) Tony

51. The certified copy of Tony's death certificate dated 14 February 2017 shows that Tony was born on 29 January 1946 and died on the 11 February 2017 in Harrogate District Hospital of infective endocarditis and hypertension. His occupation is shown as retired farmer.
52. From the probate application completed in manuscript by Claire but apparently not signed, Tony was married to Elaine but they divorced a decree absolute in Harrogate

- on 20 May 1988. Claire is the only daughter of their short marriage. Tony did not leave a will. For the purposes of inheritance tax, the sum shown is £608,425.25.
53. The inheritance tax account also completed in manuscript by Claire and containing her declaration on 31 July 2017 shows Tony's occupation as a farmer who left no will and Claire is shown as the person dealing with his estate. Gilmoor Farm is shown in the sum of £590,000 with all other assets at £15,424.05 making up that total of £608,425.25. There was a mortgage on Gilmoor Farm with the Bank of Scotland in the sum of £36,985.10. In the normal way, Gilmoor Farm was the subject of an exemption for agricultural relief in the full sum of £590,000.00. As part of the additional information it was understood by Claire that a barn was let to a third party though no formal tenancy exists.
54. The other HM Revenue and Customs documents also completed in manuscript by Claire show the only bank accounts with Halifax which has two accounts with £2,350.19 and that Tony had shares in Genus plc of £3,445.35 and the Dairy Crest Group in the sum of £3006.18 (no doubt from his days as a dairy farmer).
55. In respect of HM Revenue and Customs agricultural relief Claire filled in the form in manuscript saying "my father has always lived at the farm with his parents his father was a farmer there and my father carried on the farming tradition until his death in February. He inherited the property from his mother when she died," and there is a detailed description of the day-to-day farming activities carried out on the land through a seven year period prior, it was said "ploughing land maintaining drainage on fields by installing drainage cutting grass in fields for hay and silage and baling, making sure no pesticides were used on the land and creating set-aside land for wildlife, had some bulls in the shed of which he looked after until slaughter actively maintaining the land created small woodland area wildlife area on land," and in giving details two years prior Claire said "my dad was of retirement age but he did not stop working as a farmer he was still actively maintaining the land. My dad spent sometimes till late at night ensuring that the hay bales and the silage was done I have evidence of this if needed. He also made sure he claimed his RPA payments for the land as it was organic and set aside." In respect of the farm buildings it was said "large stone barn houses silage/hay bales taken from fields small barn has housed bulls small stone barn storage for hay bales." In respect of the additional information the answer was "here is currently a man residing on my dad's land who had a link to my father's house for electricity. My father was aware of him and he lives in a mobile home is currently under police investigation for theft of some of my father's personal belongings. He has also dumped rubble," and "my father has always been a farmer at Gilmoor Farm and held no other job. He did at times worked long hours. He had previously been a dairy farmer."
56. On 13 November 2017 at the District Probate Registry in Leeds Claire was granted letters of administration as the personal representative of Tony who died intestate.

(3) Claire

57. The position of Claire and her relationship with her father Tony and her mother Elaine is apparent from the documents in the Harrogate County Court (case number 88 DO 102), the court welfare officer's reports, Mrs Bean dated 16 November 1992 and 21 February 1994, together with two witness statements of Tony on 11 March 1983 on 28 April 1993.
58. The 16 November 1992 report records that Tony and Elaine first met many years ago in Devon when they were both working at a holiday camp. Three years later they

corresponded in the late 1970s and contact was re-established in 1981 and in 1982 they were married. After they were married Elaine moved to Harrogate from Cardiff and lived on Gilmoor Farm for a while but was told by Tony that the cows come first. Elaine conceived Claire within a month of marriage but before her birth she and Tony were already living apart therefore there was no contact between Claire and Tony. Claire was born on 11 June 1983. On 7 September 1983 in the Harrogate Magistrates Court a final order was made granting custody of Claire to Elaine. Elaine made it clear in their divorce proceedings that she did not want to have anything to do with Tony or Tony to have any contact with Claire. In 1991 Tony tried to re-establish contact with Elaine with a view to being able to see Claire. Elaine indicated that Claire knew that Tony had abandoned her before she was born and claims that Claire did not wish to have contact with Tony.

59. It is quite clear from Tony's two witness statements that Tony made efforts to retain contact with Claire.
60. The 21 February 1994 report summarises Elaine's determination in the face of all attempts to persuade her to cooperate in establishing a relationship between Claire and Tony. Elaine claims Claire was at too vulnerable an age to be able to cope with face-to-face contact with Tony and that Tony would prefer to preserve the little progress that had been made by sending cards, getting school reports and school photograph. Claire was too young to be able to appreciate the version of events she learned from Elaine which was totally one-sided and that it may be in time that Claire will want to question what she has heard. The conclusion was that Claire's lack of curiosity about her father was a symptom of Elaine's desire to exclude Tony from her own life and that of Claire. Tony's position was that he was a patient man and he needed to keep the door open and that greeting cards was the minimal method to achieve this.
61. Looked at from the outside it is apparent that Claire was in an invidious position, and this was not to change for over 10 years until 2005 when Claire was 22 and she first met Tony.

(4) Matthew and James

In view of the fact that there are no records concerning Matthew and James I consider it better to address them on the basis of their cases below. I also deal with their separate cases in an analytical way because that is how their evidence has been challenged during the course of this trial and then summarise their position in the round when considering the appropriate relief to grant in this particular case.

The law

62. As the parties do, I set out the law at the outset. On the basis of the parties' skeleton arguments there is no dispute as to the essential relevant law on proprietary estoppel though the Defendant's skeleton argument relies upon statute and additional cases on the expiration of equity and the need to achieve minimum equity to do justice.
63. The starting point for most aspects of the cause of action that relies upon proprietary estoppel (which, unlike other estoppels, does give rise to a cause of action) must be the important decisions of Lord Walker in *Thorner v Major* (supra), *Gillett v Holt* (supra) and *Jennings v Rice* (supra) (and *Campbell v Griffin* [2001] EWCA 990) which have conveniently and shortly been summarised more recently in *Davies v Davies* (supra).

64. Proprietary estoppel was shortly summarised by Lord Walker in *Thorner v Major* at paragraph 29 viz; “is based on three main elements... A representation or assurance made to the claimant, reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance.”
65. I briefly set out the key extracts from those three judgements of Lord Walker on the three elements required that must be proved by Matthew and James for proprietary estoppel:
66. (1) representation or assurance made to the Claimant; “I would prefer to say (well conscious that it is a thoroughly question begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to clarity in a case of this sort is hugely dependent on context,” per Lord Walker in *Thorner v Major* at paragraph 56;
67. (2) reasonable reliance on it by the Claimant; “the judge dealt with the question of reliance (which is really an issue of causation) before he made a finding about detriment,” per Robert Walker LJ in *Campbell v Griffin* [2001] EWCA 990 at paragraph 19, having made clear in *Gillett v Holt* (supra) at 232 that reliance must be pleaded;
68. (3) detriment to the Claimant; “the overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of expenditure of money or other quantifiable financial detriment so long as it is something substantial. The requirement must be approached as part of a broader enquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances,” and “the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it,” and the court must “stand back and look at the matter in the round” per Robert Walker LJ (as he then was) in *Gillett v Holt* 232,233;
69. The other matters of importance and considered in both parties’ skeleton arguments in addition to the three elements and which I accept require consideration on particular on the facts of this case are:
70. (4) if the representation became an irrevocable representation “... What makes them binding and therefore irrevocable is the promisee’s detriment reliance on them. Once that occurs there is simply no question of the promisor changing his or her mind...” Per Robert Walker LJ in *Gillett v Holt* at 227E;
71. (5) in assessing whether the requirement of detriment has been met any countervailing benefits acquired as a result of reliance must be taken into account;
72. (6) the minimum equity to do justice per Robert Walker LJ in *Jennings v Rice* from paragraphs 44 to 51 which in summary is; “The cases show a wide range of variation in both the main elements, that is the quality of the assurances which give rise to the claimants expectations and the extent of the claimant’s detrimental reliance on the assurances. The doctrine applies only if these elements, in combination, make it unconscionable for the person giving the assurances...to go back on them... Sometimes the assurances, and the claimant’s reliance on them, have a consensual character falling not far short of an enforceable contract (if the only bar to the formation of a contract is non-compliance with section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the proprietary struggle may become indistinguishable from a constructive trust)... It is no coincidence that these statements of principle refer to satisfying the equity (rather than satisfying, or vindicating, the claimants expectations). The equity arises not from the claimant’s expectations alone, but from the combination of expectations, detrimental reliance,

and the unconscionableness of allowing the benefactor (or the deceased benefactor's estate) to go back on the assurances... 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... 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 to the detriment suffered by the claimant as defining the appropriate measure of 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 of solely of expenditure on improvements to another person's house.... 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.”

73. The short summary of the law on proprietary estoppel by Lewison LJ in *Davies v Davies* at paragraph 38 lists nine particular matters almost all of which rely upon the judgements of Lord Walker as set out above. For fullness I set them out;
 - (1) deciding whether an equity has been raised and if so how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether in the circumstances which have actually happened it would be unconscionable for the promise not to be kept either wholly or in part (*Thorner*),
 - (2) the ingredients necessary to raise an equity are (a) an assurance (b) sufficient reliance by the claimant on that assurance and (c) detriment the claimant in consequence of his reasonable reliance (*Thorner*)
 - (3) however no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance on detriment are often intertwined and whether there is a distinct need for a “mutual understanding” may depend on how the other elements are formulated and understood (*Gillett*) but also *Henry v Henry*[2010] UKPC3,
 - (4) detriment need not consist of the expenditure of money or other quantifiable financial detriment so long as it is something substantial. The requirement must be approached as part of a broader enquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances (*Gillett*) but also *Henry* (supra)
 - (5) there must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability (*Gillett*)
 - (6) thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result (*Jennings*)
 - (7) in deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance (*Henry*). (This is the only one of the nine matters which does not rely upon Lord Walker.)
 - (8) proportionality lies at the heart of the doctrinal proprietary estoppel and permeates its every application (*Henry*). In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid (*Jennings*). This does not

mean that the court should abandon expectations and seek only to compensate detrimental reliance but if the expectation is disproportionate to the detriment the court should satisfy the equity in a more limited way (Jennings)

(9) in deciding how to satisfy the equity the court has to exercise a broad judgemental discretion (Jennings). However the discretion is not unfettered. It must be exercised on a principled basis and does not entail what HH Judge Weeks QC memorably called a “portable palm tree”; *Taylor v Dickens*[1998] 1 FLR 806 (a decision criticised for other reasons in *Gillett*)

74. Claire relies upon her statutory rights both to have carried out the probate of the estate of Tony and to benefit by inheriting Gilmoor Farm as the only daughter of Tony and on the basis that he and her mother Elaine were divorced and in circumstances where Tony died intestate.

Matthew’s case

75. It is clear from the Claimant's List of Documents for standard disclosure dated 20 March 2019 that Matthew has effectively no contemporaneous documents whatsoever to prove his case in respect of his relationship with Tony. When asked on numerous occasions whether any documents existed to prove his oral evidence and on one early occasion whether he had telephone messages emails or other documents he said at about 11:40 am “no single email, no text message, no phone transcript, no I spoke to Tony almost every day why would I need to do otherwise?” In fact the only document from Matthew was after Tony's death when he sent a text message to Claire on 11 February 2017 and said “you don't have to thank me. I would have done anything for your dad.”
76. In this regard alone I accept the third submission in Bruce Walker’s skeleton argument that Matthew has no documents, but it has no consequence on the particular facts of this case.
77. Accordingly, his case and his evidence were contained in the Particulars of Claim and Further Information which he signed with a statement of truth and his witness statement made over a year ago and dated 25 January 2018 which contained the usual statement of truth which he confirmed in giving oral evidence. Any objective reader of those documents will appreciate there are obvious inconsistencies on matters that can give rise to ridicule and which understandably gave rise to a detailed forensic examination the effect of which was to, sometimes rightly, allow Matthew to give a fuller explanation of the facts he relied upon in support of his case for proprietary estoppel.
78. Matthew gave oral evidence over a longer day being effectively cross-examined analytically by reference to those elements required for a cause of action in proprietary estoppel on his pleadings and witness statement, some of the other witness statements of Claire, the single joint expert report and answers to questions, photographs, correspondence with his previous instructing solicitors but also other material of which he had no first-hand knowledge of including communications between Tony and Lloyds Bank and his emails with Claire, and also some other documents.
79. Taken as a whole, the clear view I formed of Matthew was that he patiently answered all the questions some of which might be considered repetitious, he was entirely honest, straightforward, not evasive when some of the obvious inconsistencies in his case were plainly pointed out. Though there was more than one occasion in which these obvious inconsistencies were effectively pointed out, on one of them, when

dealing with yet another occasion in which he once again referred to working for 20 hours a week on one particular task he admitted at about 3:15 pm that “I have written that wrongly, hands up to it, it is nonsense to say 20 hours on drains,” and a little later at 3:20 pm that “60 hours week was misleading, I have put in 20 hours and that is what I have done.” I have to concede I was impressed with the straightforward way in which he gave this evidence. It was only on one occasion that I recorded in which he spoke ill of Tony at about 2:45 pm” that is absolutely a total lie... he has never done that” which was a reference to an email from Tony to Claire in which Tony indicated he had been spraying (with a knapsack) at the farm on 11 June 2015. When this matter was re-examined at about 4:30 pm, by the reference to a knapsack he indicated that “the spraying we did was with a tractor with a sprayer on it” so his response may on reflection have been unnecessary. There were also misunderstandings in his evidence in the meaning of language for instance the use of word ‘ploughing’ or ‘rotavating’ the land and at 2:15 pm he said “ploughing is with the plough, sorry my fault it was rotaivating by me and not Tony.”

80. I therefore propose to review Matthew’s evidence on the basis of the three elements necessary for proprietary estoppel and then after Claire’s case more generally.

(1)Representation or assurance made to Matthew

81. There are five representations relied upon by Matthew in the Particulars of Claim some of which but not all are dealt with in his witness statement and some but not all dealt with in the Claimant's skeleton argument. In regard to some of Matthew’s oral evidence he expanded and/or clarified the case. I deal with them individually having regard to the Defence and the Defendant's skeleton argument and cross examination of Matthew.
82. The general allegation in the Particulars of Claim is that Tony represented to Matthew that he could use the land as he liked while Tony was alive and Tony would leave the land to Matthew when Tony died and it is in this context that particular (1) below has to be considered and not more narrowly.
83. (1) Thus, in the late 1990s Tony gave up farming and told Matthew that he could have the land as he was already farming the land and wanted this to continue; Tony told Matthew that he could do what he liked with the land.
84. In his witness statement Matthew says: “up until the age of about 16 years of age I helped Tony to milk the cows and worked on the farm. Tony was still working on the farm though in practice he did very little physical work. When Tony gave up doing this, which was towards the end of the 1990s, he told me that I could just have the land as I was farming and working on it and he wanted me to continue with that and he told me that I could do what I wanted with it. No paperwork or agreements were drawn up I had been working hard with Tony and I trusted him when he told me this and I continued to work on the land and to improve it on this basis,” (paragraph 13) and “aside from the time in 2000 when I left the UK to work in Belgium I had possession of the land for all that time. I had uninterrupted access and I could do as I pleased on the land,” (paragraph 14), and “I also made hay to use the grass on the land which kept it in good condition” (paragraph 19) and “Tony didn’t interfere with this and I didn’t pay him any money and he didn’t pay me any money for the work or time that I did,” (paragraph 20) and “Tony was in my view a man of his word I trusted him and I believed him when he told me that the land would be mine and he told me this on many occasions,” (paragraph 22).

85. The context of this representation is also dealt with in the witness statement of Matthew in this way: "I knew Tony for all of my life,"(paragraph 5) and "he was close to my parents and from the age of around eight or nine I used to help them out on the farm. I was never paid for that work but I didn't expect to be paid at that age, it was a useful work experience and a help to Tony. I also loved being outside with the machinery and the animals although it was hard physical work," (paragraph 6) and "Tony was present on many of our family occasions and celebrations including birthdays and Christmas as he didn't have his own family around him to share those times with," (paragraph 7) and "my family and I did our best to look after Tony. He liked his food and he liked to have company around him. He would often turn up at our house or caravan when we lived on the farm and help himself to food. He clearly felt at home and relaxed to be able to do that and where we could we invited him to eat with us and we plated up food, dinners and sandwiches, pork pies, cheese and desserts so that he could take food home with him," (paragraph 26) and "my wife did Tony's washing regularly which was not an easy task as he did not wash his clothes every week and at times they were very dirty but she tried her best to keep them as clean as possible," (Paragraph 27).
86. In his oral evidence Matthew said (on paragraph 13 of his witness statement) at about 11:20 am "Tony gave up farming when he gave up milking in 1997 or 1998 and the land was bare as there was nothing doing... I ploughed the fields maintained the fences and things like that I was maintaining the land... I was reseeded regenerating the land planning and seeding grass and crops," and (on paragraph 8 (1) of the Particulars of Claim) at about 11:45 am Matthew said "he told me I was getting the farm," and (on paragraph 23 of his witness statement) at about 11:50 am "Tony did not say he would leave the land by his will" and "I took it that 'I could have' it meant that it was mine" and 'have the shed' the same connotation."
87. Taken as a whole I am satisfied on the evidence given by Matthew on this representation in context was clear enough and that in the circumstances of this case there was sufficient clarity for me to be satisfied for the purposes of proprietary estoppel that a representation was made to Matthew both on the land and the barns. In giving this evidence I considered Matthew to be clearly telling the truth and this is in fact what Tony told him. Matthews case and evidence which I accept and is clear, was that Tony promised him that the farm was his and not that he would be given the farm in Tony's will.
88. The attempt to cross-examine Matthew to undermine as evidence between about 11:25 am and 11:40 am on this representation in my judgement failed. Bruce Walker relied on a transcript of discussions between Tony and Lloyds Bank on 20 September, 27 October and 16 November 2016 the purpose of which was to extend Tony's mortgage but of which Matthew "had absolutely no idea" and "can't say what he said to the bank I have no idea," and thereafter Matthew confirmed that "I had no tenancy" and "I did not pay any rent," and when shown two emails between Tony and Claire on 21 June 2014 and 15 August 2016 referring to Tony farming Matthew said "Tony was not farming in 2014," and "I can't tell you I did not write the email.. not at all Tony was not ploughing."
89. (2)The second representation is that in approximately 2001 Matthew's wife Sarah (who belatedly provided a witness statement and oral evidence) complained to Tony that she was sick of Matthew going to the farm every weekend and spending so much time there and Tony said to Sarah "well it's Matthew's in the end anyway" and "well it's only for your lots benefit." Matthew's witness statement is in very similar terms

(paragraph 24). When asked about this at about 11:55 am Matthew said, “that was my wife's conversation” and “Tony made no mention of leaving land by a will.”

90. In the light of those answers and because it's better to hear evidence first-hand, I will interpose the evidence given by Sarah for the purposes of this second representation. She says in her witness statement, “Matthew spent a considerable amount of time at the farm. He would spend most evenings and weekends there. I know that he did a lot of work on the farm including fencing and ploughing and he made all of the land even for when he bailed the hay. A lot of the barns were in a bad condition and Matthew would mend the roofs and fix the doors etc. Tony would never have done this if Matthew didn't. Matthew used to spend more time at the farm than he did with me,” (paragraph 13) and “The fact that Matthew spent so much time at the farm caused a few arguments between us as my children and I had to go there to spend time with him. He saw Tony more than he saw me. I recall on one occasion many years ago that I mentioned to Tony about Matthew spending so much time at the farm and Tony responded saying something to the effect of “well it will all be Matthew's one day anyway,” (paragraph 15) and “Tony would often say to me that Matthew would be sorted when it came to the land and it would “all be Matthew's one day “I never asked him about this but he would bring it up in conversation. He would repeat himself a lot and this is something he said to me and Matthew consistently over the years,” (paragraph 16), and “I recall on one occasion many years ago that Matthew was looking into the possibility of getting a farm in Canada. When I mentioned it to Tony he said something to the effect of “why would he want to do that when this will all be his one day”(paragraph 17) and “I never asked Tony whether he had a will but he would bring it up in conversations and say “it's all sorted,” (paragraph 18).
91. Sarah had difficulty in speaking for medical reasons and often spoke quietly and appeared to be nervous, flustered and confused on occasions but nonetheless managed to give sufficiently clear evidence which I considered completely honest and straightforward. When asked about the time and the jobs that Matthew did on the farm after some confusion she said at about 12:30 pm (in respect of paragraph 13 of her witness statement) “Matthew did this out of kindness” and when taken to Matthew's statement (paragraph 24) again after some confusion she said “Tony never mentioned a will” and Tony said “it will all be his” and (to paragraph 17 of her witness statement) at about 12:50 am “it is true I did not want him to go to Canada to farm and we fell out but Tony said ‘why go to Canada when he has one here’ which I understood him to mean Gilmoor Farm”. In respect of other questions, she did also say at 12:55 am about the relationship between Tony and Matthew “he was treated as a son, believe me my husband was very close to him.”
92. I accept this evidence of Sarah in support of the second representation for which I now have first-hand evidence and I consider it clear enough and with sufficient clarity in all circumstances to give additional support to Matthew's case on this second representation which is consistent with the general first representation and gives me confidence that Tony did from an early time make it clear to both Matthew and Sarah that Matthew would get the farm. The case is not that Matthew would get the farm in Tony's will; but a representation that Matthew would get the farm which I accept and is clear.
93. (3) The third representation relied upon by Matthew was that in approximately 2000 when he started to create a pond for Tony he said “well if I'm not going to see it completed you will.” I have to say that this particular representation does not in my judgement stand out on its own to give rise to a case sufficiently clear for the

purposes of proprietary estoppel and the witness statement of Matthew (paragraph 25) adds little more.

94. The cross examination then focused on HM Land Registry which I have set out above and the fact that these particular fields were not in Tony's ownership at the material time and in respect of which I can see some force. In answer to this at 12:10 pm Matthew said after an explanation of dates: "I was led to believe he did." I should make clear that this did not affect my findings of the evidence given by Matthew generally on the representations.
95. (4) The fourth representation was made in approximately 2011 following Tony's renewed relationship with Claire when he told Matthew that he felt he ought to leave the farmhouse and garden to Claire but that he would still leave the land to Matthew.
96. This is dealt with in Matthew's witness statement as follows: "Tony did talk to me after he had reconciled with his daughter about his future plans. He told me that he wanted to leave her the farmhouse. Tony said to me 'I'm sorry Matthew but I think I should give Claire the house' I told him that I was fine with that and I understood that he would want to leave his daughter something now they were reconciled... I was comfortable with him leaving her the house as she was his daughter. From then on he told me that he intended to leave the farmhouse to Claire in his will but he would leave me the land and the farm buildings" (paragraph 33).
97. In his oral evidence he said at about 11:15 am "Tony said I would get the rest of the land, yes he did say that ...he told me what I was getting and I took that to be the farm and buildings... No he did not tell me about his will he did not say those words to me."
98. I am quite satisfied Matthew has established this representation that was clear enough for a representation for the purposes of proprietary estoppel. I am in no doubt that when giving this evidence Matthew was telling the truth. Again, the case and Matthews evidence is not that he would get the farm and buildings in Tony's will but that he would get them and this is clear and I accept this representation was made by Tony.
99. Attempts to undermine Matthew's case on this representation in my judgement once again failed. Again, reliance was placed on the conversations in 2016 between Tony and Lloyds Bank and a note dated 9 September 2016 between Age UK North Yorkshire and Tony which included discussions as to Tony's pension and tax avoidance. Understandably the answer at about 12:25 pm from Matthew was "I was not aware of that."
100. (5) The last representation concerns a conversation in 2015 between Tony and James which records Tony to James "I bet Matthew hates Claire as without her he would get everything." This is not dealt with in Matthew's witness statement. Again, as with the second representation, this is better dealt with by James and for this purpose I will interpose his evidence after dealing with Matthew's evidence.
101. Matthew's oral evidence admitted at about 12 30 a.m. "yes this is not in my witness statement ...James told me" For reasons I have not fathomed it was at this stage that Bruce Walker said to Matthew "this is just a pack of lies" to which he answered firmly "no." Somewhat curiously, James was not asked any questions about this evidence on this fifth representation and his witness evidence was not challenged.
102. James witness statement on this fifth representation was "I always knew that Tony intended to give the whole land and buildings to Matthew on his death (with the exception of the land which he agreed to transfer to me). I also recall that Tony intended to leave the farmhouse to Claire and on one occasion he said to me 'I bet Matthew hates Claire as without her he would get everything' I can remember this as

it was hay time so either August or September 2016, Matthew was loading the bales and I was stacking them. Tony came out to see us with his dog and helped a little bit as we talked,” (Paragraph 32). I accept James’ evidence on this particular representation but consider it no more than corroborative evidence so far as Matthew’s case is concerned. On its own it would not be sufficient to give rise to a representation sufficient for the purpose of proprietary estoppel.

(2) Reliance by Matthew

103. The second of the three elements required for a cause of action in proprietary estoppel is reliance in the sense that the representations should cause the detriment. It is in a sense the glue that sticks the two central elements together and is fact-sensitive.
104. I did not detect any cross examination of Matthew that focused on the question of reliance and I acknowledge that it did not appear to play a major part in the Defendant’s skeleton argument but as it is a necessary legal ingredient, I will deal with it shortly.
105. Paragraph 9 of the Particulars of Claim asserts that Matthew “relied upon the said representations” and to Tony’s “knowledge acted to his detriment” and therefore for the purposes of the need to plead reliance I am satisfied the case been made out (see the reference to *Gillett v Holt* 232 per Robert Walker LJ the summary and *Davies v Davies* set out above.)
106. The Defence requires that reliance is strictly proven.
107. As I have already quoted above in Matthew’s witness statement he says in a slightly different context “I trusted him when he told me this and I continued to work on the land” (paragraph 13) and more specifically and relevant “I did this because over several years Tony said to me that the land was mine. I would not have invested the time manpower and cost in the land if I thought that it was going to be left to someone else. That is not what Tony told me” (paragraph 14).
108. I am satisfied Matthew has provided appropriate evidence to prove reasonable reliance for the purposes of his cause of action.

(3) Detriment to Matthew

109. There are six particulars of detriment in the Particulars of Claim relied upon by Matthew. These were individually challenged, and I am prepared to deal with each separately though I appreciate that the matter of law one needs to stand back and look at the matter in the round as I will do later.
110. (1) Since the late 1990s Matthew had carried out work including spraying on several occasions in order to get rid of rushes and weeds, this cost approximately £30 per acre every time this was carried out, approximately 12 times over a period of 15 years.
111. There is no specific reference to the word “spraying” in Matthew’s witness statement and the matter is dealt with in this context “in the main the work required was to cultivate and improve the land it was in a poor state of the land needed to be rotavated and de-stoned annually for about seven years to kill the weeds and has been done several times since to get rid of the rushes and the weeds to prevent them from growing. This was a heavy and difficult job. It is far from finished now and over the past 25 years I have made significant improvements to the land but this has taken time and there is work left to do,” (paragraph 14). When rightly challenged about this at

about 2:45 pm he said “I must have missed it out, the spraying not because it is untrue.” I should point out that it was in this context the misunderstanding over Tony using a knapsack to spray which I have set out above arose.

112. I consider this to be a substantial detriment for the purposes of a proprietary estoppel case (when put in the context of the matters) and whilst it should have been dealt with in Matthew’s witness statement, the Particulars of Claim are sufficiently clear together with Matthews acknowledgement that he missed it out. I am in no doubt the oral evidence he gave on spraying was truthful.
113. The cross-examination of Matthew was presaged by reference to the single joint expert report of David Peat and the answer he gave to the questions of the expert on the first occasion and his opinion that “I do not believe that there would be any difference in value if the suggested works of improvement are taken into account. Irrespective of the stated works any prospective purchaser who inspects the property at the valuation date would observe the poor condition of the property and budget for works on an appropriate scale to remedy this,” and when asked about this at about 2:35 pm Matthew said “I do not agree my work is worthless.” I detected a certain misunderstanding and possibly a misapprehension of the law on the part of Bruce Walker as to the requirements of detriment in a case for proprietary estoppel. The court is concerned with considering the detriment to Matthew and not whether there was a benefit to Tony as a result of the spraying or indeed any other item of detriment relied upon by Matthew. Though not argued, I consider this to be established law; see *Rochdale Canal v King*(1853) 16 Beav.630, *Crabb v Aaron* DC (supra) and *Lloyd v Dugdale*[2001]EWCA 1754 which can be compared to *Gillett v Holt* -but also *Davies v Davies* proposition (7)-viz “suffered by the Claimant” and see the comments in” *Snell's Equity*”33 Ed(2020) paragraph 12 – 044 where some of these cases are cited.
114. (2) the second detriment in the Particulars of Claim is that since the 1990s Matthew carried out repairs to some of the farm buildings replacing some roof sheets on buildings and also replaced and rebuilt walls in the sheds and concreted the floor in the parlour. This is dealt with shortly in Matthew's witness statement, “over that time I have carried out repairs to some of the farm buildings and replaced roofs on some of them. Namely the cow house and the building where the tools are stored. I have also replaced and rebuilt some of the walls but there is still a lot of work to be done and some of the buildings remain in a poor state” (paragraph 15).
115. In giving his oral evidence he was shown several photographs (pages 343,361,359,529,330 and 338) and he showed at about 3:45 pm where he had reroofed the roof though he could not find a photograph of the machine shed, and where he built an 18 foot wall with a 7 to 8 foot return of which the latter again was not shown on a photo and a further barrier wall but there was no photo of the concreting of the parlour. This gave a fair picture of the extent of the work he had done which in my judgement was substantial (taken with the other matters) for the purposes of a proprietary estoppel case. On this occasion the evidence of Matthew was in fact supported by independent documents in the form of photographs which I am quite satisfied go to verify the truth of his evidence.
116. Again, he was shown the expert report of Mr Peat which recorded the poor condition of the farm buildings with the exception of the two sheds which were generally in good condition, but Matthew did not accept the expert evidence. As an independent jointly instructed expert I am quite satisfied that I should accept Mr Peat's opinion evidence, however in my judgement this does not disprove that the work had been done by Matthew and as indicated above. My concern was again with Matthew’s

acts of detriment as opposed to any benefits that Tony would receive from these works in the end product.

117. (3) the third detriment in the Particulars of Claim is that Matthew repaired fences on the land at his own cost and with his own materials and carried out the physical work himself. This is dealt with shortly in Matthew's witness statement: “.. and I have repaired the fences at my own cost with my own materials as well as carrying out the labour and physical work myself. I hired and bought the machinery myself and did the labour for approximately 20 hours per week on the expectation that one day the land would pass to me” (part of paragraph 17).
118. When he was shown the expert report of Mr Peat which indicated the fencing was in “poor condition” Matthew at about 3.00pm indicated that “it had probably been done 20 years ago and the fencing had a 20 year lifespan.” Once again I was not satisfied that Matthew's evidence was undermined. When taken with the other items I am satisfied this can be considered as substantial for the purposes of a case in detriment for the principles of proprietary estoppel. I also consider that this evidence should be put in context of a general case on fencing. It will be noted that the report used for Probate purposes I have quoted above refers to the farm “ which is all fenced” and I am satisfied it was Matthew who was responsible over the years for this.
119. (4) the fourth claim in the Particulars of Claim for detriment is that Matthew installed drains on the land at significant costs (approximately 20 hours a week of his time) which has improved the land substantially. The Further Information indicated that this was an ongoing exercise because of the state of the soil on the land in general. The work was started by W Rimmer in around 1994/1995. This work was paid for by Tony for a cost of approximately £19,000. About five years after this work was done wet spots started to show on the land and Matthew carried out some investigations into those spots which he marked on an attached drainage plan showing in blue the drains carried out by W Rimmer and in green the work he carried out by digging them out, removing the drains and cleaning them using draining rods and putting back gravel to allow them to settle. The cost in labour amounted to approximately 20 hours work on weekends in probably 48 weekends each year for which Matthew estimated the labour would cost be £25-£30 an hour and noted that Tony was aware that this was an expensive task.
120. The example I have set out above is one in which the hours asserted were plainly wrong and Matthew accepted this when properly challenged about this inconsistency. When the single joint expert provided in answers to questions, Mr Peat based his opinion on Google Earth images between 2007 and 2018 in which it was “suggested” there was “no discernible change” or the work “have little effect” or indeed “in worse condition” with only one run being in slightly better condition. This was put to Matthew from about 3:30 pm onwards, he understandably gave a combination of reasons including that he had not cleared out one of the drains for three years, or at all another, one had filled in, and some which were not drains but ditches and he maintained: “I have cleared it out” and some had filled up. I of course note the independent expert's suggestions and the limitations of the use of Google Earth as he fairly accepts, however this evidence does not undermine the fact that Matthew did carry out the works as he asserts and I was quite satisfied he was very familiar with each of these fields and the details he gave of the attempts which had been made by him to drain the land. This appears to be an ongoing battle to rid the land of water. The plan of the farm shows the beck at the bottom of the land to which the water ought to drain.

121. Overall therefore I am satisfied that this does amount to a substantial detriment the purposes of this case in proprietary estoppel (again taking the context of the other matters)
122. (5) the fifth detriment relied upon by Matthew is that over the years he bought various items of equipment and machinery to use in maintaining the land and provides a non-exhaustive list of more recent agricultural machinery purchased between 2013 and 2016. In his witness statement he says, “most of the equipment and machinery is stored at the farm and it belongs to me. I bought it to assist with the tasks required to be carried out on the farm,” (paragraph 20) and “I would not have purchased machinery which depreciates over time to use on the land if I did not believe that the land would one day pass to me as Tony promised”(paragraph 21). The only challenge to this detriment was about 3:35 pm in which Matthew admitted “I get to keep my machinery.” I should also record that the bundle contains numerous photographs of Matthews machinery which in some is in action making hay.
123. In my judgement the fact that Matthew will be able to keep his machinery rather misses the point which in fact is rightly and clearly set out his witness statement. The reason he purchased the machinery was in reliance on the promise made by Tony that the farm would be his one day. He purchased this machinery to work the land and now has a less valuable asset which is of no use to him if he has no land on which he can make use of it. I consider this to be a substantial detriment taken with the other matters set out above.
124. (6) the last of the particulars of detriment is a general one and in a sense captures Matthew's case on detriment. He says that on average he worked on the land improving and maintaining it for approximately 20 hours per week over the last 20 years.
125. Matthew's witness statement contains several short references to working over 20 years on the farm in particular “in the main work the required was to cultivate and improve the land which was in a poor state. The land needed to be rotavated and de-stoned annually for about seven years to kill the weeds and has been done several times since to get rid of the rushes and the weeds to prevent them from growing. This was a heavy and difficult job. It is far from finished now and over the past 25 years I have made significant improvements to the land but this has taken time and there is still work left to do. I did this because over several years Tony said to me that the land was mine..”(Paragraph 14) and “the top field has been de-stoned approximately 12 times in the past 15 years and I have repaired the fences at my own cost with my own materials and as well as carrying out labour and physical work myself, I hired and bought the machinery myself and did the labour for approximately 20 hours per week on the expectation that one day the land would pass to me, (paragraph 17) and “I have also inserted some drains on the land over the past 20 years at a significant cost to myself in terms of labour and machine hire which also improved the land” (paragraph 18).
126. It was when Matthew was challenged on this general detriment that he conceded again what appeared to be multiple counting of the 20 hour a week and said at 3:40 pm “it was not my intention to mislead” and equally when dealing with the ploughing of the land as oppose to rotavating at about 3:50 pm indicated “I got a bit muddled up” when it came to his evidence in the paragraphs of his witness statement that I have just quoted above. I have dealt with these two inconsistencies more generally above.
127. Again the challenge to Matthew's evidence on this general detriment returned to the single joint expert report and answers to questions given by the single joint expert Mr Peat which as I have indicated above considered the state of the land when inspected on 20 December 2019 by Mr Peat and upon which Matthew commented at about 3:45 pm that the expert had “looked at the fields 18 months later therefore cannot be said to

be poorly grazed when the grass was 2 foot long.” and shortly before that at about 3:40 pm “nothing has been done for three years now.” which I took to be a reference to the effect of this dispute with Claire and Matthew’s ability to continue working on the land.

128. As set out above the report of Mr Peat understandably and rightly gives independent opinion evidence on the condition of the land when inspected and from that projects backwards as to the quality of the work in terms of land management and/or cultivation over a number of years and having considered the neighbours land is of the opinion Gilmoor Farm has potential to be returned to grassland and limited arable cropping as opposed to its present use which is only suitable for grazing. When rightly challenged about this, again given the very long period of time over which Matthew continued constantly to work the land in the way set out in his witness statement Matthew proceeded to explain from about 3:40 pm onwards once more: “okay I have drained the land I have rotavated in 2016.... We were cutting hay and commented, “it was no better than moor land” before he started spraying and rotavating which happened over a long period of time and he considered “I have achieved quite a lot.” I have of course detected tension between what Matthew considered he has achieved from his efforts and what the independent expert considers objectively speaking the effects of this has been which in summary is not impressive. However, I did not consider and I am not satisfied that this independent expert evidence of Mr Peat was such that I should disbelieve what in fact Matthew asserted he had been doing over this period of time as opposed to weighing how valuable this work could be considered in the end product.

129. I entirely accept that Gilmoor Farm could and possibly in the future will become a more productive farm if that is the ambition for what may be considered a more commercial basis however, on the basis of the evidence I have reviewed as a whole it is not how the husbandry of the land has been approached in the way that Matthew farmed the land. I anticipate that if Tony wished to have a commercial profit-making farm on his doorstep he could have gone to a rent-paying farmer who may have farmed in the way that Tony’s neighbours farmed their land as was achievable according to Mr Peat. I am quite satisfied that after Tony gave up milking cows, he was content for Matthew to farm the way he has in fact done in the past 20 years.

130. The conclusion I have come to is that I accept the general case of Matthew that he has in fact over 20 years worked at Gilmoor Farm in the way he describes in his witness statement and has given about 20 hours a week throughout that period. That in my judgement is plainly a substantial detriment for the purposes of a cause of action in proprietary estoppel.

131. I should lastly deal with the pleaded assertion that “for most of her life until approximately six years before his death Claire and Tony were estranged” The relationship between Tony and Claire was shortly dealt with before 4 pm and he admitted that “after 2005 I knew he saw her.” When Matthew’s relationship with Tony was compared and contrasted and described by Bruce Walker (based on the discussions between Tony and Lloyds Bank in 2016) as “a lad in a shed” Matthew said with what I considered to be some real warmth at 4 pm “I was very, very, very good friends with Tony.” I accept his evidence.

132. Matthew’s witness statement deals with Claire and Tony’s relationship in several paragraphs which I shortly summarise: “until the last few years of Tony’s life he was estranged from his daughter.” (Paragraph 11) and “these events were a shame and a disappointment to Tony who was in the main lonely and just in need of company around him. I am explaining the details to highlight the background to his matter not to paint anyone in a bad light but to explain how Tony and my family were close and to also

establish that Tony's daughter was not around when the promises and assurances were made to me by Tony about the farm and its future. In some cases, the promises were made before he was in contact with her and therefore, I believe she cannot provide any evidence to undermine this because she was not present.” (Paragraph 12) and gives further evidence in paragraphs 32 and 32 of his witness statement, of particular factual situations in 2016. When challenged about these after 4 pm he said to the last question “that is what Tony told me” and commented “Tony told me Claire got the house and I got the farm; how can that be disinherit?”

James’s case

133. The pleaded case for James is different from that of Matthew as it is circumspect in time and the small plot of land involved.

(1) Agreement, representation or assurance made to James

134. The case is put quite shortly in the alternative that by an agreement made orally in about 2012 between James and Tony, James agreed to give Tony his jeep and in return Tony agreed to leave the small plot of land to James upon Tony's death and further or alternatively that in about 2012 Tony represented to James that if James gave him the jeep Tony would leave the plot to James upon Tony's death.

135. In his witness statement James says “in 2012 Tony and I agreed that I would transfer my vehicle to him. In exchange Tony agreed to transfer the land to me on his death. In August 2012 I transferred my black jeep to Tony... Tony loved the jeep and was more than happy with the arrangement,” (paragraph 13) and “Tony could not transfer the land to me at the time as it had a mortgage on it but he told me that he would make the necessary arrangements and not to worry. I asked him a few times over the next few months if he had sorted it and he said he would. I remember in the summer of 2013 he came down to the caravan and stood in the doorway. He told me that he had put the transfer of the land in writing..” (Paragraph 15) and “.. The agreement was never put in writing, but I did not expect it to be because I trusted that Tony would follow through with what he said, and he told me that he had sorted it out.” (Paragraph 16) and “I never paid rent to Tony for living on the land as this was never part of the agreement. It was a simple 'swap' of my vehicle for the land. At the time I thought that Tony actually got the better end of the deal because the land was in poor state and needed a lot doing to it.” (Paragraph 17) and “Tony assured me that he had dealt with the transfer of the land to me and I presumed this was by way of a will as he told me he could not transfer it in his lifetime due to the mortgage on it” (paragraph 23).

136. The background circumstances in which this arose was again that “Tony walked to school with my mother and they were very good friends throughout their lives. I therefore knew Tony for most of my life and he spent a lot of time with my family when I was younger,” (paragraph 6) and “... We stayed in Shaw Mills until 2004 and then we bought a house and stayed there until 2007 when we unfortunately lost the house as it was repossessed. I therefore asked Tony again if I could place another caravan on the land and Tony agreed and told me I could put the caravan wherever I wanted to... My wife and I moved into the caravan two months later and we have been there ever since. The only thing that Tony wanted in return was money for electricity which I paid to him every month in cash.” (Paragraph 7) and “as I was living on Tony's land I remained in close contact with him and saw him frequently. Sometimes it was every day

sometimes it was every few days. I often hosted barbecues and Tony would join us and share the food and I made meals for him regularly. On some occasions, I would cook and take food to Tony as he loved his food and I know he didn't really cook for himself," (paragraph 8).

137. In James's oral evidence when examined he said at about 10:10 am on the paragraphs in his witness statement I have quoted above he said "yes we paid for electricity" and "there was no water I had to put the water pipe in. It was coming down, but I had to renew it as it was blocked." He also clarified if it was not already clear from the pleaded case at 10:20 am "there was nothing in writing, no contract.. No land sale agreement..[but] Tony was happy with this. Tony was like an uncle to me and I trusted him." James was challenged about whether Tony had a mortgage it will be repaid on his death. James said shortly after 10:20 am "it is what he told me, I'm only going on what Tony said and what I said" and "yes he did tell me he would put the transfer in writing and I was presuming he would put it in his will." Then clarified (paragraph 15 of his witness statement quoted above) by the reference to the transfer of land in writing was "in a will that is what I meant." When it was generally suggested that he paid £200 a month for rent and he fell behind and therefore gave Tony his jeep he said "no I have not paid £200 a month rent and I did not fall behind and give him my jeep."
138. James's evidence was challenged by reference to the notes between Tony and Lloyds Bank in 2016 and having confirmed that "I did not do car repairs for Tony, I had nothing further to do with the car," and "I did not rent a shed from Tony," and eventually said at about 10:40 am "I have no explanation for what Tony said to the bank." and "I can't explain why no mention was made the plot" when Tony had his conversations with the his Bank.
139. James was also challenged by reference to the witness statement of David Rever Thomson of Sigma Antiques who knew Tony for over 30 years and saw him several times a week and he came to give oral evidence which was challenged. David Rever Thomson's statement says "Tony was very frugal and always drove an old banger car. Once when he did not get paid rent he was offered and took Jimmy's old jeep as payment even though it was very thirsty and needed money spending on it to be roadworthy. He told me this was £1000 or £1200 I'm not sure which, off the debt." (Paragraph 7) having previously indicated that "Tony had been a long-standing friend of their mothers since school days he felt that almost as a patron he could help Matthew and Jimmy by charging them a low rent and not pressing. Eventually he would be paid some if not all of the money due it seemed.." (Paragraph 4). When this was put to James at about 10:50 am he said "no it was not the deal that I owed Tony money and gave the jeep for a debt." When cross-examined on this matter at about 11.15 am on he said "Tony always had cars on their last legs or the smallest Peugeot.. Yes, he did have do a lot of work [on the jeep] he was pleased to have it."
140. I will return to David Rever Thomson later however I ought to now deal with his evidence and my assessment of him as a witness of fact as he directly challenges the credibility of James's evidence on the agreement and representations between Tony and James. I consider him a curious witness and seemed at times incapable of understanding the most simple matter and was overbearingly certain that he was right. The context in which the question of rent arises in his evidence is Tony's inability to pay for antique items that he "would put something aside sometimes for months until he had saved up to pay," which according to his evidence was dependent on James paying, in this case, the rent. I am quite satisfied that Tony was frugal and was generally short of cash and this was a good excuse for not paying David Rever Thomson for antique goods which he desired but could not pay for. It has little to do with the truth

of whether in fact James was due to pay any rent to Tony in respect of the small plot of land or in fact ever paid rent to Tony.

141. I should deal with my impression of Tony as a witness of fact. In giving his evidence over half a day on the second day of the trial I considered James to be an entirely honest and straightforward witness and I believe his account in both his witness statement and his oral evidence as to the arrangement he had with Tony. I am quite satisfied that it is true that James has never paid any rent to Tony since moving onto the small plot in a caravan in 2007 and certainly not since 2012 when the log cabin came. I therefore reject the suggestion that James gave Tony the jeep because he owed rent.
142. Accordingly, I am satisfied that there was an oral agreement made between Tony and James in 2012 and Tony told James in 2013 he would transfer the small plot of land to James. I consider this to be a clear enough representation or assurance for a case in proprietary estoppel. I also consider that James case on this representation is clear and straightforward.

(2) Reliance by James

143. The Particulars of Claim plead that “in reliance upon the said representation to Tony's knowledge James acted to his detriment,” This is dealt with by James in this way “I trusted Tony completely due to our close relationship and therefore I did not think to question what he told me or ask for evidence of this as I knew that he would have made sure that everything was sorted for me” (paragraph 16) and “from then on I lived on the land and still live there now.” (Paragraph 17) and “I would not have transferred my vehicle to Tony without his assurances that I would be the legal owner of the land on his death and I certainly would not have conducted extensive works to the land to improve it if I thought Tony would not transfer the land to me.” (Paragraph 35)
144. The Defence puts James to strict proof of reliance.
145. I am satisfied James has proved his case that he reasonably relied upon the agreement with and the representations made by Tony and as a matter of causation this led to James acting to his detriment.

(3) Detriment to James

146. The Particulars of Claim rely upon four separate particulars of detriment so far as James's case is concerned which considers matters between 2012 and 2015.
147. (1) the first and maybe obvious detriment is that James gave the jeep to Tony. This is dealt with shortly in James's witness statement. “In August 2012 I transferred my black jeep to Tony” (paragraph 13).
148. By an order of District Judge Stockdale dated 3 October 2019 the parties agreed two retail values for the Jeep: £2500 on James's case and £1950 on Claire's case and it is for this court to determine as a matter of factual evidence the applicable figure. When this was put to James he said at 11:40 am “the jeep was worth £2000” I have set out above the evidence on the value of the jeep on the basis of what Tony told David Rever Thomson who recorded a figure between £1000 and £1200. This is evidence I do not accept. I find as a matter of fact the correct value of the jeep is £2000.
149. James was cross-examined at about 11:40 am on the basis of a comparison between these figures for the jeep and the single joint expert report of Mr Peat which indicated an open market licence fee in 2007 of £1,800 per annum and in 2012 an increased sum of £2100 per annum making a total over the relevant five years of £9,750

in relation to which he acknowledged the figures and then said “I put the caravan on the place. I was not renting the land.” and agreed “I can take the log cabin away” and “I have no evidence of its value.”

150. What in fact James was given by Tony was a plot of land which on James's evidence which I accept was in poor condition though I also accept as a matter of financial value according to Mr Peat's report, assuming freehold vacant possession, planning permission for agricultural use only, and adequate access rights would on the 20 December 2012 be valued at £25,000 but may have to be reduced on the basis of the adequacy of the access rights. On any basis however as a swap for a small plot of land the jeep there can be no doubt reviewed objectively James got the better deal.
151. That said and I will return to this later I am quite satisfied that in giving his jeep to Tony, James suffered a detriment which taken with the other matters I consider substantial.
152. (2) the second detriment in the Particulars of Claim relied upon by James is that he bought a twin unit log cabin in or around September or October 2012 and installed on the plot at the cost of about £10,000. The witness statement of James does not repeat this figure but says “as Tony made assurances to me that the land was to be mine on his death and that the arrangements were all in place, I bought a twin unit log cabin in around September/October 2012 and began to develop and improve the land which I thought would be mine one day.” (Paragraph 18). When asked generally about the caravan at about 10:10 am he said “in 2007 I got a different caravan and I got it from a local caravan park which had to keep it up to a certain standard. If I moved it I got it free.” James's evidence of the purchase of the log cabin in 2012 was not challenged and the only specific challenge to this detriment was by reference to the Particulars of Claim and James said at about 11:45 am about the log cabin “yes I could take it off the plot.”
153. Taken as a whole on this detriment I am satisfied James did have to spend approximately £10,000 for the log cabin (of which there are photographs page 554 and 555 and is a substantial structure) which no doubt including removal and replacing on the small plot of land and all the usual associated costs of such an exercise. In so finding I accept that it is clear that there are no documents to evidence such a payment, but I accept as truthful the somewhat broad-brush figure relied upon by James. From any point of view this is a substantial detriment.
154. (3) the third detriment in the Particulars of Claim is that after 2012 James stripped the plot and landscaped it, installed new drains re-seeded it with grass, erected fencing, planted willow and oak trees and an orchard with apple and plum trees which he estimated he spent approximately £20,000 in materials and many hundreds of hours of labour. Again, this is plainly a broad-brush figure and has no documents in support. His witness statement (paragraph 19) is in very similar terms and doesn't require quoting. However he does add “Tony knew that I was doing all of this work to the land and let me get on with this as if I was the legal owner of it. He never tried to stop me from doing the work which reinforced to me that it was my land and would be formally transferred over to me when Tony died.” (Paragraph 20).
155. There are numerous photographs which provide evidence of the work carried out by James of which over seven were shown to him then he gave oral evidence from about 11:45 am until about 12:00 pm including “stripping all the grass.. Planting grass which I had to do twice... Putting in a new road.. it all had to be landscaped as it was full of brambles and rubbish, it was just scrubland... levelling it all off... I planted conifers in 2013 or 2014.. I rotavated it all, planted grass seed and used topsoil.. I imported free topsoil and hired a digger and a dumper... I installed a septic tank and a stormwater drain the field on the other side... And I had to renew it.. I did fencing in

the middle of the field.. [and separately] other fencing installed was carried out as stock fencing at the back to keep other people's stock out.. I planted apple trees and plum trees..There are about seven apple trees, two plum trees and one pear tree.”

156. Consideration was then given to the costs of various jobs that James had carried out. Bruce Walker attempted to list these figures and add them up as the above answers were given which he quantified at about £4,000. On that basis there was a large discrepancy. James said at the end at about 12:10 pm when this discrepancy became apparent that “ I honestly think that is right to say £20,000”
157. Whilst I am more hesitant in accepting this apparently large and rounded figure, and inclined to think that a lesser sum could be analytically arguable, I have formed the view that I consider James to be an honest and straightforward witness on all matters and did his best to properly assist the court with this rounded sum which is more probably in the right ball park. What I am satisfied about is this is a further substantial detriment for the purposes of a case of proprietary estoppel.
158. (4) the last detriment pleaded in the Particulars of Claim is that in or about 2015 James constructed two sheds on the plot at the cost of approximately £1500. His witness statement says again without any figures “I also built two sheds on the land around three years ago. Tony never said anything about this or asked me not to do it.” (Paragraph 20). Though there are no documents again there are photographs showing the sheds on the small plot of land which are not insignificant. When asked about the pleaded case at about 12:10 pm James said “I cannot take down the sheds really though I could take the materials and reconstruct them.” but he was not challenged on the figure pleaded.
159. On this last detriment I accept James’s figure of about £1,500 for the two sheds having regard to the photographic evidence and though a broad figure. it is an acceptable sum and therefore taken in addition to the other matters set out above this is further supportive evidence of substantial detriment for the purposes of a claim in proprietary estoppel.
160. Overall, I am quite satisfied that taken together the matters pleaded and relied upon by James’ witness statement and his oral evidence is plainly substantial for the purpose of the relevant detriment required for this cause of action.

Matthew and James's previous solicitors’ assertion of a tenancy

161. The Defence pleads that Matthew and James asserted their status as tenants in correspondence. This is a reference to two letters written by Richard Gouldsborough of Atkinson Firth on 25 May 2017 to Claire; “we received a telephone phone call from our clients on 16 May informing us that locks have been changed to barns/outbuildings which are used by our clients in the course of their business and form part of the premises of which our clients enjoy a tenancy. We have advised our clients that the locks should be removed immediately and wish to advise you that should there be any further interference with our client's rights under their tenancy that our client will take action to protect their rights,” and on 5 June 2017 to Grays Solicitors who Claire then instructed which said “our clients are in occupation of the land surrounding the farm. They have an oral tenancy which is protected. They are not licensees at will as suggested in your letter. Our clients hold their tenancy on terms that they are entitled to remain on the land until they choose to retire. Tthis was agreed with your client’s late father.”
162. This case was put clearly and fully to both Matthew and James. It relates back to a conversation in James's log cabin on his plot at Gilmoor Farm on the 23 February

2017 with Richard Gouldsborough, a solicitor at Atkinson Firth, and at which he took a three page manuscript note. All the correspondence that ensued over the next four months was in reliance upon that note because he did not meet Matthew or James again and had a limited telephone call with only James, the effect of which is quoted above.

163. On the first day of the trial I acceded to an application for Richard Gouldsborough to be permitted to give evidence and subsequently allowed the use of a summary of his evidence attached to the application as the basis of his evidence in chief on which he was then cross-examined. The reason for this late evidence was that Atkinson Firth had to deal with their indemnity insurers and Richard Gouldsborough had to be released from any conflict-of-interest with Matthew and James and they had to agree to waive the privilege in the legal advice documents passing between them.

164. The note taken by Richard Gouldsborough of the meeting with Matthew and James leaves a lot to be desired and there is a typed note which he arranged and checked which in some material respects is plainly not an accurate record. It was his view at about 2:00 pm that the words used in the note “did not reflect word by word” what was said but that “he was confident they did reflect the conversations.” Central to the note (on page 2) is what four days later on 28 February 2017 he summarised as his advice to Matthew and James and sent it only to James's address at the log cabin; (1) you have an agricultural tenancy agreement, (2) Matthew and James have a “wish” to remain on the land for life, and (3) James's protection is under the Mobile Homes Act but that he would prefer to “stick within the agricultural tenancies area if at all possible” .

165. The key part of the typed up note on Page 2 records as follows;

“then he said you can rent it. We have never paid rent.

Peppercorn?

You and your brother can stay on the land for the rest of your life.

He told Matthew.

He told James 6/7 years ago. He said to the boundary is your land. Fenced off area put... transplanted trees. He helped and do it.”

166. It is by reference to these words Richard Gouldsborough took the view that he recalls that he had been orally instructed by both Matthew and James there was an “agreement” between Matthew and Tony and separately between James and Tony that in due course and without the approval of either Matthew or James he described as a “tenancy” for both of them in a letter to Claire on 25 May 2017 and to her solicitors on 7 June 2017 which I have quoted above. The objective reader of this note would be forgiven for forming a different view, but maybe more importantly, if those were the instructions given to Richard Gouldsborough by both Matthew and James separately, one might have reasonably expected the basic facts of any agreement to have been recorded. Indeed not unsurprisingly Richard Gouldsborough was subsequently asked by Grays Solicitors acting for Claire on 7 June 2017: the date the tenancy had been granted, the commencement date of the tenancy, the rent payable, the land and buildings to be included, the identity of the tenant and the protection claimed, which, when Richard Gouldsborough asked Matthew and James to provide the answers to these basic questions in 13 June 2017 they dis-instructed him and on 19 June 2017 instructed their present solicitors, Irwin Mitchell, because they simply could not answer those questions because they had no basis in fact.

167. When Richard Gouldsborough was asked about 3:45 pm about page 2 of his manuscript note he said “I understood that to mean that they had an agreement to rent it.” Unfortunately, as he transcribed it that is not what his note records and when asked about the word “peppercorn” with the associated hieroglyphics in his manuscript note which in fact was underlined twice he commented at about 2:30 pm “I remember this

was a note to myself that is why it has two underlining” and proceeded to recall without any reference in his note that “they said there was no formal tenancy agreement.. No agreement in writing.” It was subsequently made clear by Richard Gouldsbrough that “all my actions followed from that note.” And it would appear that his preference for an agricultural tenancy was assisted by a Google search he made on the 24 February 2017 because as he indicated about 2.45 p.m. he “wanted to understand the up-to-date practice of agricultural tenancies which he had dealt with early in the 1980s”

168. Both Matthew and James deal shortly with their former solicitors at the end of their witness statements in this way “It is also worthy of note that prior to instructing Irwin Mitchell my brother and I instructed Atkinson Firth solicitors in Baildon. At this stage we are not intending to formally waive professional privilege but will do so if the court requires it for the time that I instructed that firm. I met that solicitor once and the letters that were prepared by him were not checked or approved by myself or my brother. As soon I realised that he was misrepresenting our position we dis-instructed him as our legal representative. I believe that we were not properly advised, and we did not represent to him that we had any form of tenancy or licence arrangement with Tony regarding the land or the farm.” (Paragraph 57 in Matthew's witness statement and in similar terms in paragraph 34 in James's witness statement).

169. Matthew gave oral evidence on this topic between about 12.30 pm and 1.20 pm. When asked about the note of the meeting he said from about 12:35 pm “I said Tony said I would get the farm and he said why and I said because Tony wanted me to get the farm that it was not written down. I said Tony wanted me to stay there the rest of my life as I would not sell it.” and “his words were have you got that in writing and he said that we were probably better off as a tenant and we would say we paid a peppercorn rent and he would see what he could do,” and “the letter was a total misunderstanding of what I told him,” and later on at about 12:40 pm Matthew said “I did not tell him that Tony said I could rent it, I said Tony said I could have it.. It is not what I told him I have never rented and never paid rent on that land... He told me to say that I had paid a peppercorn but I had never heard that word before” and he said “you are screwed,” at about 1:09 pm. In response to being shown Atkinson Firth’s letter dated 5 June 2017 sent to Matthew and James at James’ address which advised “our stance will be that you have an oral tenancy of land. If she therefore wishes to terminate your tenancy she must serve notice. As the tenancy commenced after 1995, the tenancy would be governed as a farm business tenancy. An agricultural tenancy does not have to be in writing to enjoy the protection of the Agricultural Tenants Act 1995..” Matthew said “we left our faith in our solicitor.. We were looking at our solicitor to do the job as best he can.” By the end when Matthew was shown the letter from Atkinson Firth to Matthew and James dated 13 June 2017 which asked for details of the tenancy he replied just before 1:20 pm “there was no tenancy I cannot say it anymore”

170. James gave oral evidence about his relationship with Atkinson Firth for about an hour between 10:50 am and 11:40 am. His recollection of what was said at the meeting at about 11:00 am was “we started telling him our side and that Tony gave me the land and I showed him the boundary fence.. That I had done a deal with Tony. He said is there anything in writing and I thought he said ‘you are knackered’ if you have no paperwork.” and at about 11:10 am James said about the note recording him staying there for life “that I was supposed to get a deal. I was also obviously going to stay there. I mentioned the deal but he stopped us.. He said there was nothing in writing and that is it.” Later on at about 12:35 pm James conceded that when Matthew saw the draft letter date 5 June 2017 settled by Atkinson Firth that “this is when Matthew went cat” which when I asked him to explain the word ‘cat’ he said “went mad”.. and “Matthew

said the solicitor has taken us down the wrong path” which James acknowledged “was my fault” because I allowed it as I was “scared of losing my house.” At about 11:40 am at the end of his questions I noted that Bruce Walker put it to James that “this is all a pack of lies” to which James firmly replied “not true.”

171. I am satisfied that in respect of the understanding that Richard Gouldsbrough took away from the meeting on 24 February 2017 with Matthew and James that they told him that each of them had “an agreement” with Tony which he later decided unilaterally to call a “tenancy” without any instructions, that his recollection has let him down and there has unfortunately been a misunderstanding or a breakdown of communication between the three of them. In my judgement this line of cross examination of both Matthew and James in no way dented my view of their honesty and credibility in respect of each and every aspect of their respective cases on proprietary estoppel as I have set out above.
172. I should very briefly record that I consider there was a misunderstanding between Richard Gouldsbrough and James in respect of the jeep. In the summary of the evidence of Richard Gouldsbrough it is said “at no time during his initial meeting with Matthew and James or subsequently did they convey to him that they had an expectation that Tony would provide in his will the land be transferred to them or that there was any agreement reached with Tony during his lifetime that land would be transferred to James in exchange for a motorcar.” At about 11:05 am when James was asked about raising this matter at the meeting he said “yes I did tell him but I only mentioned the ‘deal’” and I did not not mentioned the jeep.” and “I did not stay stum about the plot for the jeep.” To the extent that the evidence of Richard Gouldsbrough is relied upon to undermine James’s case, I am satisfied that I prefer the recollection of the oral evidence of James, rather than the fuller recollection of Richard Gouldsbrough who also said in re-examination at about 3:40 pm that James did not mention that he “had done a deal with Tony to exchange a plot of land for the jeep on Tony's death.” I suspect that at the meeting in the log cabin Richard Gouldsbrough was understandably trying to construct a legal framework that he was comfortable with, given the limitations on his legal knowledge, as opposed to listening to what he was being told about “a deal” by James.

Complaints to friends that Matthew and James had not paid the rent

173. The Defence positively pleads that Tony complained from time to time to friends that Matthew and James had not paid the rent in full. The witness statements on behalf of Claire deal with both payment of the rent generally and specifically in respect of James's rent for the small plot of land. I therefore deal with them separately.
174. (1) Matthew; when Matthew gave oral evidence in respect of rent for the outbuildings and barns and the land at about 3.20 pm he said “it is absolutely wrong to say the shed was rented” and “believe me I have never paid any rent..I am not a poor rent payer.”
175. Claire relied upon several factual witnesses to support the allegation that Matthew had not paid rent for both the barn and the land of which two were put to Matthew; David Rever Thomson who I have referred to above and Eric Broadwith.
176. David Rever Thomson's witness statement deals with what Tony had said in this connection: “He has a great interest in history and antiques which he bought spasmodically when he had the money to do so. He bought with an educated and discerning eye. Often Tony would put something aside sometimes for months until he had saved up to pay. This would often depend on the Wills brothers, Matthew and

Jimmy Wills. He told me that they used his farmyard and some buildings for storage and a workshop for their business putting in bases around the country for telephone masts and were meant to pay him rent. When Tony said he had not been paid when due I suggested that he asked for the money Tony replied that they would pay it eventually. He was a gentle man and I think he was loath to ask.” (Paragraph 3) and “Tony was a very nice man and very interesting. He never stopped talking when we met which probably came from living on his own. He mentioned many times over the years that the Wills brothers were paying money for the barn and for living there although I do not think he ever had anything in writing. Tony just trusted them. He would sometimes want to buy something from me and say that he would pay me when he got the money from rent from the brothers. On one occasion he owed me money for something he had bought (I cannot remember what it was) and when he came in with a cheque which had been written out by Matthew but made payable to me, obviously at Tony's request. It was for between £1,000 and £2,000. I cannot recall the precise amount or exactly when this was, but recalled Tony saying it was money he was owed for rent.” (Paragraph 24).

177. When the first part of David Rever Thomson's witness statement was put to Matthew at about 2.20 pm he said “I have never paid a penny in rent” and when the second was put to him he said “it is not a true story.” When David Rever Thomson was challenged about his evidence at about 11:15 am, he said of the first quote “no it was not an excuse to cover up. He would not do that.. He was not delaying payment” and on the second quote (by reference to a document he produced which became “Exhibit D1” which shows details of a watch purchased by Tony in minute handwriting and of numerous entries and sums of money which David Rever Thomson said was dated the 8 September 1999 because this was written on the previous page he had not brought to court and he had only discovered the document that morning in coming to court) he admitted “there was nothing to link that particular entry in his hand writing to Matthew.. I did this from memory” and accepted that Tony bought 50 to 60 items from his antique shop and maintained “that this cheque was from Matthew to Tony” and he could remember that detail of that particular cheque 20 years ago by reference to his handwritten note. I found David Rever Thomson's evidence somewhat remarkable and in addition to what I have set out above, I considered him to be a witness whose evidence on this point I should treat with great care as the basis upon which this note jogged his memory of an event 20 years ago. Conversely, the clearness and certainty with which Matthew gave his evidence on the payment of rent and in the way in which he maintained this I consider to be entirely honest as with all his evidence.

178. The second witness Eric Broadwith with who has known Tony for 40 years and considered him a friend but especially over the last 12 to 14 years and who was not required to come to court, said in respect of rent “when he was working for me I used sometimes to go up to the farm to pick him up and I saw tractors and machinery in some of the barns. I asked him who they belonged to and he told me I cannot remember now what name he said. I asked him if they paid him for using the barns and he told me that they paid him ‘when they can’ but he said that they did not always have any money. As I say, I thought Tony was too soft and a fool to himself.” (Paragraph 4) This statement was put to Matthew at about 2.25 pm and he said again “I do not pay for the barn and I am not an unreliable payer.” Again, the emphatic and simple answer of Matthew and the honest way in which he gave that evidence I consider to be entirely trustworthy. It is surprising that if Eric Broadwith in fact has been a friend of Tony for 40 years that he does not even know the name of the person who apparently rented the barn.

179. The balance of the witnesses who gave evidence on rent were not called for examination. Michael Trenholme was a builder who Tony helped about nine years ago

refers to “one of the two brothers ‘using the buildings’ and how they were meant to be paying Tony rent for this but he grumbled that he only got some now and again and they were often usually late in paying leaving him strapped for cash ..” (Paragraph 4). It seems common ground that Tony was always strapped for cash and I take this to be an excuse for that fact as opposed to the truth that Matthew was paying Tony rent. Anthony Paul McTague who runs another gallery in Harrogate and had known Tony for 30 years as a customer then says “I understood from him that he let out some or all of the land rather than farming it himself” (paragraph 6) which whilst it no doubt correctly explains that Tony was not actively engaged in farming, the use of the term “letting out” of course does not amount to an assertion that Matthew was paying rent to Tony. I am quite satisfied that these further witnesses provide no sufficient evidence for me to be satisfied Matthew was paying rent to Tony as a matter of fact. Much of the evidence follows a similar pattern in which Tony has conversations with others in which he excuses his lack of cash by reference to not receiving rent rather than the reality of the situation which is that he was generally short of cash. This was well-known to almost everyone who dealt with him including Matthew and James.

180. I appreciate that Michael Webster also deals with the question of paying rent but I do not take him to be a friend of Tony as opposed to the fiancée of Claire. I will deal with his evidence below but Michael’s statement was not put to Matthew. I reject Michael’s statement as evidence of the fact that Matthew was paying any rent.

181. Taking the evidence as a whole I am quite satisfied that Matthew has never paid any rent to Tony either for the farm buildings or the land as it did not form any part of their relationship. I accept Matthew’s repeated and firm responses that he has never paid rent and reject any suggestion that what Tony may have said to his friends for various reasons, including the fact that he delayed payment for antique items that he would otherwise have purchased, and informed people that he was strapped for cash, all in my judgement point to the same unchallenged reality that Tony was short of cash and for his own reasons found it necessary to give rent as an excuse for his predicament as opposed to any support for a case that in fact Matthew was paying rent.

182. (2)James; James was in fact not challenged by reference to any of the witness statements that specifically deal with him paying rent for the log cabin on the small plot of land. I have dealt with the evidence above in respect of James providing Tony with his car because he owed rent which I have rejected. He was asked at 10:30 am about paying rent and said categorically “no I do not pay £200 per month rent and did not fall behind..”

183. The particular witnesses who it is said were friends of Tony's and provided evidence for Claire as to James paying rent may be summarised. David Hall another antique dealer who knew Tony for 20 years says “I was aware from our conversations that he had various buildings let off to some people and that he had allowed someone to occupy a caravan on the land. I never enquired into the specific details of these arrangements but he did often say that they were not reliable in paying him rent and were often late in paying by not just weeks but months. I knew that because they were late in paying he was sometimes having to promise David Thomson at Sigma Antiques payment for things he bought him when he got the money from the tenants.” (Paragraph 9) This relates back to the evidence of David Rever Thomson which I have rejected. Michael Trenholme asserts that “he told me about two brothers who put up telephone masts. He said that one of them was living in a caravan on a field at his farm. I understood that this person was meant to ‘see Tony right’ for living there but Tony grumbled about him being late in paying.” (Paragraph 3). I consider this too vague and unimpressive evidence to go in any way to affect the simple fact James made absolutely

clear and I accept that he has never paid any rent to Tony for his home. I have also dealt with the evidence of Michael above and to the extent that Tony told him James “paid rent for his caravan” (paragraph 26) I reject this as truth of the fact that James in fact was paying rent to Tony as opposed to a conversation between Tony and Michael which may have taken place along with many other conversations I refer to below.

184. I am quite satisfied that I should and do accept the evidence of James that he has never paid Tony any rent for the log cabin with a small plot of land. Such an assertion would be entirely out of keeping with the real relationship that existed between them.

Claire's case

185. I first set out Claire's pleaded Defence.

186. The first positive assertion in the Defence is that Matthew and James on occasion got grass for hay off some of the land for their own purpose and benefit but otherwise it was not understood they were occupying Gilmoor Farm or actively working the land. To the contrary until his death Tony farmed the land and received payments from the Rural Payments Agency. When Further Information was asked as to what farming activities Tony carried out on the land the answer was based on Claire's knowledge of Tony continuing to farm and derives from conversations and emails with Tony which would be included in her documents and her witness statement.

187. To counter the assertion Claire that was estranged from Tony the Defence sets out four particular matters in support of their relationship as follows (1) the two met during Claire's final year of undergraduate study (i.e. 2005) at which time it was difficult for the two to meet as a result of Claire's mother's relationship with Tony, (2) however Tony received Claire's school reports prior to meeting her as a result of a court order and Tony sent Claire birthday and Christmas cards before they first met, (3) Tony spoke regularly and/or obsessively about meeting Claire and Tony had always desired and attempted to meet Claire, (4) after 2015 when Claire purchased a permanent home Tony visited Claire's home including staying overnight. When Further Information was asked about the first meeting between Tony and Claire in 2005 it was said Claire met her father in 2005 at Pine Martin in Harrogate with a long-term partner she took along for support and drove there in his MTV blue Clio. She parted ways with him in the early months of 2006 and therefore the date of the meeting cannot be any later as she was no longer dating this person and the two did not remain in physical contact... Her previous partner also drove Claire on many occasions to search for Tony and at one point drove her down a bumpy track before she became too anxious and they drove away. In response to the balance of the Further Information it was indicated details would be provided in Claire's witness statement and the relevant documents in support supplied.

188. The Defence also sets out a positive case of Tony's intention for the farm under six separate headings; (1) Tony intended the farm to be Claire's after his death and even prior to meeting Claire. Tony also investigated and inter vivos transfer of all or part of the farm to Claire, (2) Tony and Claire corresponded over several years in relation to planning a “viable business” on the farm making use of the land, (3) Tony engaged in planning such business in order to provide for Claire and future generations and that desire increased when Claire's daughter Grace was born since he wanted her to grow up on the farm, (4) Tony assured Claire on many occasions that the farm would ultimately be hers and in particular discussed with her various family ventures on the

farm and/or land including farming chickens, the preservation and a caravan park and a care home, (5) Tony and Claire discussed the installation of temporary dwelling on the farm to be occupied by Tony and which Claire could stay in with Grace while visiting, and (6) at no point did Tony suggest to Claire that Matthew and James or either of them would have any interest in the farm land by will or otherwise. The Further Information provided by Claire on (1) was that it included in advice from the NFU believed to have been in June 2016 (a manuscript note of Tony's was attached) and advice from the Bank of Scotland in their letter of 26 July 2018 (a copy was attached) and it was believed that Tony consulted a solicitor, on (2) and (4) this information would be given in Claire's witness statement and Michael Webster her partner.

189. Claire's witness statement is quite detailed and impressive and covers her case from her formative years onwards to the extent that she can give evidence. I propose to deal with her evidence in the same order as her pleaded case and include Michael's evidence as necessary.

(1) Tony farming and not Matthew

190. In fact, Claire's witness statement does not as indicated in her Defence set out a positive case that Tony was farming, not Matthew or James though of course it was not the case that James was farming.

191. The only passing example I noted in Claire's witness statement of Tony farming is that "I remember in or around April 2014 being at the farm with my father. I know the date as some new bulls were in the barn at the farm. I asked my father why he had got them and he looked at the caravan Jimmy was living in and said he was owed money and that he would get it back when the bulls went to slaughter. I understand this to mean it was Jimmy who owed him the money.. Apart from this there were very few occasions in which my dad mentioned either Matthew or James - they were never particularly mentioned in conversation." (Paragraph 31) Accordingly at about 12:50 pm I asked about these bulls which were at Gilmoor Farm in about 2014 and she said with some positive enthusiasm "I have some photos of the bulls.. There were five bulls and I named them all; Bruce Bonaparte Boris, then she could not remember the last two, but they all started with a 'B'." When I asked the more important question about Tony farming and whether Tony owned the bulls she said, "yes they were his bulls.. They were slaughtered in 2016" As promised Claire provided photographs of these bulls each of which in the usual way has a yellow ear tag.

192. Equally in support of her pleaded Defence it is clear from the email correspondence between Claire and Tony that these bulls were discussed on at least seven occasions over the course of the year between 29 April 2014 and 29 April 2015 which makes clear that there were in fact four bulls named Bruce Bonaparte Boris and Bernard. In the context of those emails they capture the intimate conversations between a father and daughter and refers to Tony feeding or bedding down the bulls therefore one can well appreciate why Claire believed they were Tony's bulls. In this regard I have no doubt why when Claire completed the probate documents that I have quoted above reference was made to the bulls as part of Tony's farming activity in recent years.

193. However, the real facts are very different. Matthew produced a second witness statement during the course of the trial in order to fairly challenge this evidence which said "I confirm that there were in fact four bulls and that they belonged to me," (paragraph 4) and "the bulls were acquired from D&P Brown in 2014" (paragraph 5) and he provided the movement book but also said "whilst they were my bulls, from time to time Tony would feed them for me when I was away working." Matthew also

provided evidence of the ear tags for these four bulls by means of an invoice to Tony as the bulls were registered under his holding number.

194. As this is the best and possibly only evidence in Claire's witness statement of Tony farming and owning these bulls, based on what Tony told her no doubt she fairly reported in the probate documents, for the purposes of this trial only I am quite satisfied that it was Matthew who owned the bulls and in the practical sense of the word he was the farmer for these bulls though no doubt Tony helped out on occasions and this is all that he was recording to Claire in their emails. Claire has been misled about the ownership of the bulls and I find it surprising and maybe telling that when she and Tony discussed the bulls Tony thought it fit to make reference to James who on any parties account had nothing to do with farming or these bulls.

195. Overall the witnesses called in this case who really could in my judgement give an independent and reliably accurate view of Tony generally farming was his next door neighbour Brian Fawcett, who is the managing director of Gilmoor Foods, and has known Tony from when he was around four years old and they went to school together and played together and has been based next door therefore for approximately 65 years. His witness statement says "Tony was also a very nice and very kind man, a real gentleman, quite educated, he spent his time doing crosswords and reading the newspaper and surfing the internet on Google. Despite his six foot four stocky build he was a bit of a loner, lived on his own most of his life and lived life as a bachelor. By nature he was quite lazy when it came to work, he relied on others around him mainly Matthew and Jimmy to help him to do jobs and in past years gone by when his mother was alive they had a pretty spotless house and the most beautiful garden." (Paragraph 6) When it was suggested to him at about 3:30 pm by reference to Tony's conversations with Lloyds Bank in 2016 that Tony was ploughing a field he rightly indicated "I'm not privy as to whether Tony was ploughing the field in 2016... Tony helped Matthew when it came to turning the hay.." and then said "Tony was the laziest person put on earth." From a witness who I considered really did know Tony all his life and was a serious businessman and was entirely credible as a witness, in my judgement this was quite telling and from everything I have seen generally in this case gave emphasis to support Tony's real nature and whether he really in fact would have got involved in the farming activities that he told others he was carrying out.

196. The Defence specifically asserts that until his death Tony received payments from the Rural Payments Agency that was payable and received by Tony until his death. So far as the farm payment is concerned, the details are apparent from the valuation report used for the purpose of probate which I have set out above and there is no challenge by Matthew. I do not consider this evidence to undermine the facts relied upon by Matthew as to his farming activities on the land.

197. Since 1 January 2015 the basic payment scheme was replaced by the single farm payment scheme. As "Scammell Densham and Williams Law of Agricultural Holdings" rightly point out in their introduction to payments to farmers under the common agricultural policy "a key characteristic of the single farm payment was that as income support which was not dependent upon the production of any specific agricultural product or indeed upon production at all. It was apprehended to allow farmers to respond better to market signals." (Paragraph 65.1) and "the stated purpose of the basic payment is to provide 'direct income support' (Regulation EU1306/2013 of the European Parliament and Council OJ2013 Article 94) (paragraph 65.65) and "detailed eligibility criteria focus rather on agricultural activity agricultural area and three examples of such provisions are given. First as has been seen the definition of 'farmer' in this context includes a requirement that there be the exercise of an

agricultural activity (although to meet this criterion it is not necessary to engage in agricultural production). Second receipt of the basic payment is dependent upon the observation of both agricultural practices beneficial for the climate and the environment and cross compliance obligations to establish form of third 'link' with the land is also established by the requirement that the payment entitlement to be activated they must be matched against eligible hectares" (paragraph 65.66.) It was therefore no longer necessary for Tony to continue to be a (milk) farmer as he had been very many years ago or a farmer who owned bulls in order to get the Rural Payments Agency payments referred to in the Defence. Evidence of receipt of such payments by Tony does not undermine the farming activities in fact carried out by Matthew for many years until Tony's death.

198. Equally I am quite satisfied from the other emails about farming between Claire and Tony that no doubt Claire relied upon, show there is one reference to Tony being on the tractor in 2015, two references also in 2015 of him making hay and one with him spraying with the knapsack (which I have referred to above) and one of him ploughing in 2016, all of which are simply records of what Tony told Claire. The further evidence such as it is of Tony's conversation with Lloyds Bank in 2016 also only records conversations of what he said about farming. I am quite satisfied none of this documentary evidence in any way undermines the real facts which are that Matthew was a farmer and not Tony in respect of Gilmoor Farm (though no doubt on occasions Tony assisted) and the emails Tony had with Claire and Lloyds Bank only supports what he said to others as opposed to the reality on the ground.

199. There was in passing some other evidence of Tony farming and in particular David Rever Thomson's witness statement says in the 1990s "Tony used to come to me for a chat and a coffee tired out after spending days digging and clearing the drainage trenches." (Paragraph 9) And when asked at about 11:20 am he described Tony doing the work on the drains himself coming to his antique shop "covered in mud." As such this is consistent with the time when effectively Tony gave up farming and I considered this to be no assistance to Claire's case that Tony was farming up until he died.

200. I am satisfied that the reality of the situation is that Claire's Defence that Tony was farming and thus effectively not Matthew is without foundation in fact. If this part of Claire's case is intended to undermine the detriment that Matthew suffered as a result the representations made by Tony, I have no doubt that I should reject the Defence, which is not to say that Claire did not believe this was taking place.

201. (2) Relationship between Claire and Tony

202. I now deal with the four matters in Claire's Defence in support of her relationship with Tony.

203. (1) Claire's witness statement deals in more detail with the first meeting with Tony in 2005 at Pine Marten in Harrogate: "my father and I spoke for approximately two hours but the time flew by. We were both incredibly nervous and my father commented on how much we looked alike. He talked about the farm and how I was his only blood relative. He spoke with great sadness that 'mother' never met me as she died the previous year. He was keen to show me the farm when I was ready and said "Well Claire, one day it will be yours." We left it that we would stay in touch and arrange another meeting at some point. We were both clearly nervous and I was relieved at

meeting him. My boyfriend drove me back to York where I told my housemate who was delighted that I had met my dad. It was apparent that my father always wanted to be part of my life but that it just had not worked out that way and that he simply did not know how to handle the situation.” (Paragraph 17).

204. This is the first occasion in Claire's witness statement in which Tony assured her that the farm would ultimately be hers and I will return to this below.
205. (2) The Defence refers to the effects of the court order which severely limited Tony's ability to be in touch with Claire. I have set out above the reference to the official court documents which record the limit of the contact that Tony was permitted with Claire after her birth until they met in 2005 as set out above. Claire deals with this in some detail in her witness statement between paragraph 1 and 15 which I do not need to quote. The bundle of documents contain undated cards and envelopes which confirmed that Tony and Claire kept in touch and on one occasion before she went to secondary school he wrote saying when corrected: “I'm busy at the farm at the moment with cows starting to have their calves always an exciting time of year I love to[see the] cows with their mothers out in the fields together.”
206. I accept this as evidence of continued and very limited contact between Tony and Claire until she was 22 years old.
207. (3) The Defence assertion about Tony speaking “regularly and obsessively” about meeting Claire (which necessarily must be before 2005) cannot come from Claire and therefore 15 witness statements have been provided some of which mention this matter.
208. From one point of view there is in fact remarkably little evidence. I should deal with David Rever Thomson again who says of these formative years the relationship between Tony and Claire “For around 10 years he was caring for his mother who developed Alzheimer's and became infirm. Tony used to discuss his problems with me and amongst these was his short-lived marriage and the fact that his ex-wife would not allow any contact with his daughter, Claire. Tony was extremely upset about this, especially after his mother's death, as Claire was the closest family he had.” (Paragraph 2) As such this does not appear to support the Defence about Tony regularly and obsessively talking about Claire, it appears be more focused on his mother and accords with the first conversation Tony had with Claire. David Hall, another antique dealer who knew Tony for approximately 20 years and therefore only the last five are of relevance but does not give any helpful evidence of the type of conversation pleaded in the Defence. Anthony McTague, who owned a gallery in Harrogate dealing in old pictures, and knew Tony for 30 years says somewhat generally and without giving dates “he talked a lot about himself and his farm and he told me that he lived alone. He also talked a lot about his daughter Claire although I did not meet her until his funeral” (paragraph 4) and then says “I remember in particular him coming to see me and saying that he managed to make contact with his daughter after many years being apart. He was absolutely delighted.” (paragraph 5).
209. It is probably the best evidence available of these conversations prior to 2005. When put in context of the order in which this last witness deals with these conversations, i.e. Tony either talking about his mother or about himself first, then the farm, and only then Claire, I do not consider this makes good Claire's Defence of regular and obsessive conversations about her.
210. (4) The Defence assets after 2015 when Claire purchased her permanent home Tony regularly visited her including staying overnight. This is dealt with in Claire's witness statement and is in the context of Tony helping her to move in early 2015 and the birth of her daughter Grace on 7 June 2015 which she summarises: “After Grace's

birth dad would say 'I used to love three people in my life, now it is four'. Dad would visit very frequently from then on. It was not possible for me to visit dad at this stage as the unsafe environment at the farm would not be suitable for Grace," (paragraph 37) and "Dad would come down to our house on an almost weekly basis and we would go somewhere. We would usually get lunch taking it in turns to pay." (Paragraph 39) and "My reluctance to visit the farm with Grace led to us talking again about what to do with the farm and particularly the fact that my father was living in a dilapidated house," (paragraph 40). When asked about this at about 11:50 am she said "I did not go to the farm then due to my baby.. I did not go to the farm until after Tony died." The date can be fixed by reference to the birth of Grace which is 7 June 2015 until the 11 February 2017.

211. My conclusions on this part of Claire's Defence therefore are that until 2005 when she first met Tony her relationship is best summed up in the conclusion of the Harrogate County Court welfare officer, Mrs Bean's report on 21 February 1994 "Tony says he is a patient man. I hope he will continue to be so. In the next three or four years Claire will probably develop more independence of thought and maybe she will wish to seek out Tony. He needs to keep the door open and I believe the sending of greeting cards is the most minimal method he can have of ensuring this" and I consider the use of the word "minimal" to rightly describe their relationship. In fact, this aspiration was not achieved, and Claire was unable no doubt due to Elaine to seek out Tony in the next 3 to 4 years and only achieve this in 2005. Whether that is properly described as estranged is probably a matter better dealt with by a family judge however the purpose of this case and a claim for proprietary estoppel I accept due to no fault on Tony's part that it is a fact that he did not see Claire and she did seek him out and only had minimal contact until 2005. Equally I am quite satisfied on the basis of the Defence that after 2015 when Claire moved into a new home and then had Grace, Tony was in constant contact with Claire at their home but not Gilmoor Farm. This generally accords with the witness statement of Michael Webster who has known Claire since 2010 and has since become Claire's fiancé who says "Claire moved into our house at the end of May 2015 then Grace was born shortly after. It was at this time I started to see more of Tony as he was a regular visitor to our house often bringing his dog Rex along with him. He would come down most Mondays or Tuesdays and often at the weekend" (Paragraph 6) and due to his work commitments he says "...I did not get to see much of Tony until we moved into our house in Chesterfield" (paragraph 13).
212. What happened between 2005 and 2015 is not part of Claire's Defence however she has given evidence in her witness statement from paragraphs 20 to 33 to which I now turn.
213. The cross-examination of Claire and her oral evidence essentially focused on her relationship with Tony over three periods of time; (1) between 2005 and 2012 when it was said the contact was very infrequent, (2) between 2012 and 2016 when it was said there was a long period of no contact, and (3) after 2016 when there was some contact. Claire said "I disagree" but nothing more with these propositions when the first two were put to her at about 12 pm.
214. In giving her evidence I considered Claire to be pensive and cautious and very slow to answer questions some of which were reasonably straightforward. To many questions she was thinking for some time before she answered (an exception was my questions in relation to the bulls referred to above when she appeared enthusiastic) and when she did answer it was generally minimalistic. I did not get the impression she was attempting to assist the court in clarifying matters of uncertainty in her witness statement and supporting documents but was in fact defensive. Nor did I consider her

shy or overwhelmed with the courtroom setting, but maybe she was just trying to ensure she got the answers right and this took longer than one would usually expect with a straightforward witness.

215. As a matter of record the emails and texts between Claire and Tony are only between 2012 and 2017. The lack of a previous record was explained in her witness statement: "I have only been able to obtain my phone records going back a few years. By way of example they show that from 1 June to 26 June 2016 I called my father 81 times." (Paragraph 38). When she was shown the first email between her and Tony on 18 June 2012 at about 11 am she said ""this is the first email I have." Accordingly, and unfortunately between 2005 and 2012 Claire now has no supporting documents she can rely upon to support her witness evidence of her contact with Tony by telephone text or email.
216. Claire's witness statement after first meeting Tony in 2005 until 2012 may be summarised as follows: "When I moved to Leeds in 2007 I began to see my father more mainly because I was nearer to Harrogate and it was easy to make the train ride. By then we were much more comfortable with each other." (Paragraph 19) and "my father and I would go walking often mostly in the Dales when he was happiest and knew lots about it." and "we had a lot of days out together mainly in the Dales... In 2008 to 2010 when my boyfriend Alec was away in Afghanistan I met up with my dad even more often"(paragraph 22) and "when I used to go to visit my father he would normally pick me up at the top of the lane due to the road being so bumpy and uneven" (paragraph 23) and "my father came to Leeds on more than one occasion to come and watch me in parades with the Territorial Army," (paragraph 26) "I do not know if this was the same occasion, as there were several but we started taking the wallpaper off the bottom of the wall and stairs... On another occasion I helped in the garden and dad strimmed and I got rid of the nettles" (paragraph 24) and "in September 2012 I lived at Robinwood court in Roundhay, Leeds. My dad came to visit me and Michael for Christmas dinner in December 2012. After this he became a regular visitor when I was not training with the TA in York or Leeds or away on a weekend visiting Michael. We would go for walks to Roundhay Park but more often I would meet him and we would go for walks elsewhere." (Paragraph 29).
217. When giving oral evidence on this Claire said at about 10:50 am "I would see Tony on a monthly basis since 2007 when I was in Leeds" and "before 2009 I relied on Tony to get to the farm" and "the first time I went the farm was when I drove there in around 2010 when I had my own car.. In March 2010." which was fixed by reference to her passing her driving test.
218. When it was pointed out of the first three emails of 18, 19 and 26 June 2012 the next one was 2 September 2012 when Tony asked about her holiday and whether she had got his voicemail and providing his mobile phone number she said shortly after 11 am "we did not always correspond by email" and when shown the next email on 20 September 2012 she said a little later "no it's not several months" and "I do not agree that we were not in touch for a few months.. No not months gone by with no contact.. the contact varied it could be daily, weekly.. Not right three months."
219. When Claire was shown further text messages between her and Tony on 20 September 2012 and later at the end of October 2012 in which Claire said "I am sorry I have not been in touch... I now live in Roundhay and it would be lovely to see you sometime" and "hi dad I'm sorry to have cancelled but I'm still in the TA" she said that about 11:15 am "no it is not right that I was not in contact for a while" and "our conversations were not limited to emails"

220. My conclusions on the level of contact between Claire and Tony between 2005 and 2012 (and in the absence of any supporting documents) is that there was not much contact between 2005 and 2007 after their first meeting, and between 2008 and 2010 there was more contact but it was not until 2010 when Claire passed her driving test that she had an opportunity to actually go to Gilmoor Farm to see Tony which she did on the limited occasions she records. Thereafter I am satisfied that she did see Tony there and on limited occasions and assisted him with works inside the farmhouse and in the garden. Over this latter period until September 2012 when Claire moved to Roundhay in Leeds I think the contact continued but was not frequent. I am not satisfied that between 2005 and 2012 Claire's contact with Tony can be described as "very infrequent" however it does taken in the round appear to me to be generally infrequent. What I am satisfied about is that after Claire and Tony met in 2005 and their relationship was plainly not so close she decided she would visit Gilmoor Farm and fully embrace him and his lifestyle, and this is entirely understandable because she still had contact with Elaine and generally speaking was expected and did attend Christmas in Wales with her mother. She explained at about 2:35 pm when discussing events in 2013 that "no I did not see Tony on Christmas Day but saw him before Christmas. We had our own Christmas situation with mother and ..I was not able to meet him for Christmas." This illustrated in 2013 the dilemma in which Claire found herself. Equally, I am satisfied that from Tony's perspective, he felt sufficiently attached to Claire by 2011, that he had decided that Claire should get the farmhouse and made this clear to Matthew.

(3) Tony's intentions for Gilmoor Farm

221. Again, I propose to consider Claire's Defence in the six particular matters relied upon in terms of Tony's intention of the farm.

222. (1) the Defence asserts that Tony intended Claire to have the farm even before meeting her in 2005. As I have indicated, Claire is generally unable to give evidence on this matter therefore essentially relies upon those two witnesses who knew Tony prior to 2005. Once again so far as David Rever Thomson is concerned, with whom I was unimpressed as a witness, but his evidence is "Tony always said Claire would inherit the farm" (paragraph 11) and "I was always of the firm impression from what Tony said to me and from the consistency of which he said that Tony never had any intention to sell the farm or land for his own benefit as it was all for Claire. This was the case even when she was a small child and he had not met her. He talked about her a lot long before their first meeting. Before they met, everything he did seemed to be with Claire in mind" (paragraph 12) and "Everything was to go to Claire as his closest relative. He would never have given any objects or land away to friends or anybody else"(paragraph 16). Apart from being unimpressed with this witness, the way the language is couched in his witness statement in terms of a firm "impression" and everything "seemed" to have been clear in Tony's mind does not fill me with confidence that over the 22 years Tony did not see Claire he had in fact formed the view that on his death he intended Claire to have Gilmoor Farm. Nor do I consider the evidence of David Hall who says Tony "said many times in these conversations that he intended his farm to stay in the family and often mentioned how he had plans and things he would do when his daughter Claire was able to work with him" (paragraph 3) which I consider to be his recollection of what took place after Tony met Claire. Equally, Anthony McTague's witness statement that "anyway it will be Claire's or anyway it will be up to Claire what happens to it all" (paragraph 6) can be relied upon

to support this pleaded assertion in the Defence that any intention was formed by Tony prior to meeting Claire.

223. I am clearly of the view that before Tony and Claire met in 2005 there is no proper basis to suggest that he intended Gilmoor Farm to be Claire's on his death.
224. The pleaded reference in the Defence is also to Tony investigating an inter vivos transfer of all or part of the farm to Claire. Claire's witness statement of a conversation early in 2015: "the pub was quiet and we were sitting at the back alone. We had a proper chat about what was going to happen with the farm. He said he needed to start signing it over and mentioned seven years as he had before. He said he did not want to lumber me with a huge tax bill and that he was going to get it all sorted," (paragraph 33)
225. It would appear that the best documentary evidence of a lifetime transfer from Tony to Claire is the manuscript note of Tony's headed "questions for NFU man" and which is undated but attached to the Further Information I have referred to above which provides "I want to give a stone barn on the farm to my daughter any tax implications if we do this" but also says "things are not ideal to say the least also things are a bit strange if the worst happens on the part I have given her the barn would her partner have any claim of any sort on the barn I do not want to give her this barn then it has to be back to pay him out" which is plainly a reference to Michael her partner. As a reference is made to Grace this document must be dated after 6 June 2015. A further document which bears the date of 26 May 2014 that is an unsigned document the pension service form which contains Tony's handwriting "I have started the process of transferring all but the house gardens to my daughter I am taking professional advice on this matter." And a third document from Age UK North Yorkshire dated 19 September 2017 shows two entries 17 June 2016 the first of which says "'client will call in later re potential transfer of all part of farm to daughter". In the next entry says "client considering gifting farm in whole or part to daughter to seek tax avoidance" and "has already made a will but intends to change this." It is clear that the three documents are inconsistent within a year of each other. It is also important to note that these documents and Claire's evidence are all from 2014 or 2015 when I accept her relationship with Tony moved on to a different phase. These documents and Claire's case is also contradictory of the balance of the evidence that Claire does wish to give in her witness statement that she would inherit Gilmoor Farm when Tony died. If anything in my judgement this goes to suggest that Tony had no clear intentions.
226. My conclusion is that the Defence, Further Information, witness and documentary evidence paint a picture when looked at in the round of Tony having uncertain and contradictory intentions about Gilmoor Farm somewhat late in the day after 2014 or 2015 then generally thereafter. It was certainly not a matter that Tony considered during Claire's formative years though as I set out above Tony had formed the view in 2011 that Claire should have the farmhouse.
227. (2) the Defence relies upon correspondence over several years between Claire and Tony in relation to planning a "viable business" on the farm and making use of the land. This is a curious plea and it goes to highlight one of the fundamental problems with Claire's pleaded case. As far as I can ascertain generally the emails passing between Claire and Tony from 2012 simply do not discuss viable businesses at the farm and how they can work together for that purpose. The three exceptions to this appear to be an email on 13 June 2014 from Tony to Claire saying "I have rung up Bowler Energy they are supposed to ring back" and this on 24 June 2014 from Tony to Claire in which postscript says "I got an email from Bowler Energy this morning the line is all right in three-phase so they're going to apply for planning permission," and on 25 June 2014 from Tony to Claire which says "yes we will meet up to discuss the wind turbine and

the hens it's all from the same company Bowler Energy Have a look on Google I will bring brochures anyway.” Taken together I have some real difficulty in accepting that over several years Tony and Claire were corresponding in respect of planning a “viable business” on the farm. At best it appears that Tony intended to show Claire some brochures. The general context of the three messages indicates a father and a daughter discussing news and making conversation.

228. My short conclusion is that this pleaded Defence and Further Information that relies on correspondence between Tony and Claire is unsustainable.

229. (3) the third allegation in the Defence is that Tony engaged in planning such business (which means a viable business) in order to provide for Claire is dealt with in a composite way in her witness statement so is as follows: “My father and I began to discuss more and more the viable options for the farm to generate an income so that it could be passed down the generations and we could have a business to run as a family. At one point I had suggested having chickens on the farm. I meant just a few but my dad took it upon himself to look into mass industrial chicken farming. Hhe sent off for all the relevant brochures and made contact with the company dealing with chicken farming. He came to our house with all the material he had had posted to him. Hhe also looked into various other options for the farm including solar farming, wind turbines and a care home. Hhe wanted me to inherit a farm with a profitable business on it but more importantly one that I would like to run. Hhe spoke to Michael about the prospect of chicken farming but Michael was not overly keen at the prospect of being a chicken egg farmer, and my father was a little disheartened. I explained that it would need to be something Michael also enjoyed as he would be giving up his own business to do it. We later looked at other options such as a cattery and my father actually went to look at a model business to see what their return was on the place. Hhe made a point of telling me that he insisted on seeing their books. He was adamant the farm needed to be profitable. I was also active in looking into other businesses we could run from the farm. We had looked at a possible DIY livery on the farm (my friend had horses) but I was conscious that there was Harrogate Riding School only a few miles away. Dad had also been interested in turning the farm into a care home as he had looked after his mother. We had also looked at creating a bee Education Centre at the farm, which I was keen on, and also a caravan park. Dad had mentioned skip hire at one point and Michael and dad had talked at length about it, but I was keen to do something more linked with my work as a teacher. Despite Michael being keen on the skip idea, other ideas were bandied about. At no point did dad mention that anyone other than Michael, me and him would be involved in this.” (Paragraph 32) There are no dates provided but in the context of her witness statement it would appear to be after April 2014. That would accord with the three emails set out above in June 2014. Michael's evidence is much more realistic, more circumspect not at all enthusiastic: “we spoke about my business and he asked if I could run it from the farm. I told him that was not really possible as my staff all lived in Chesterfield. If I was to run it from the farm it would be like starting all over again. He asked me if I would like to farm his land. We spoke about having a chicken farm although I was not too keen on this idea that I did not see how Claire and Grace could somehow fit into the business” (paragraph 19) and “Tony would always tell me how he wanted to do something at the farm so that Claire could benefit from it I recall conversations with him about installing a wind turbine or possibly solar panels so there would be some sort of income coming in to make it more possible for Claire to live there.” (Paragraph 20).

230. The documentary support for this was I understand, obtained from papers Claire found at Gilmoor Farm after Tony's death and related to Tony's business ideas (this is

apparent from the index for the bundle of documents provided for this trial.) These documents include the brochure for Bowler Eggs and Bowler Energy referred to, two letters from them dated 20 June 2014 on 26 June 2015, and a third undated document, correspondence from Christie & Co dated 25 October 2011 in respect of care homes some three years before and under separate cover sheet dated 2014 from the same company, together with some further documents. As a set of documents, it is apparent, that none have been copied to Claire but the extent they are addressed to anyone it is only Tony.

231. Claire was examined about Tony's business ventures not by reference to this paragraph in her witness statement but in fact by reference to the conversation between Tony and Lloyds Bank on 27 October 2016 from which it is clear that Tony was ringing Lloyds Bank "about a mortgage which was due for repayment" and having established that he had £60,000 in a deposit account and he was asked the question "are you looking at using that towards your mortgage to reduce the balance and interest?" He replied "what I was wanting to do was to help my son-in-law and daughter out get them a business and use that and then they and I would pay off this £100,000." It was suggested that this wasn't realistic and Claire said at about 12:15 am "I disagree there was no money to buy a business.. It could come from the value of the farm.. I disagree it was a fantasy.. I disagree I knew his finances could support that." As was often the case I did not find Claire's answers very helpful or informative about the viable business she and Tony were seriously considering.
232. Again, it is important to appreciate the late date on which these conversations took place which on the basis of Claire's witness statement I take to be after June 2014. Equally to the extent that these conversations took place between Claire and Tony it is plain to me that at best they are somewhat superficial, little more than enquiries and could not on any view be described as "planning a viable business". Describing them as a fantasy is probably slightly unfair, but I am satisfied they had no basis in reality. I do not accept the Defence when viewed objectively it could possibly be said Claire and Tony were really planning a viable business at Gilmoor Farm.
233. (4) the Defence asserts that Tony assured Claire on many occasions that the farm would ultimately be hers and it is clear that this is a central part of her case. Claire's witness statement contains numerous references to Tony telling her this including the quote I have set out above from their first meeting in 2005. The further occasions were: "on one occasion (I am not sure but I think it was 2009) we drove to Jervaulx Abbey.. He then said 'it's up to you what you do with the place when I am gone Claire. I'd like to think you would live there but if you sell the place it's up to you. I won't be there.' I told him I did not want to think about that and that I was just happy having my dad in my life and he said the same about me." (Paragraph 21) and "dad commented once that you could see the top of York Minster from the farm like a ship at sea. I said that could not be possible but on another day in or around 2010, when it was clear he got his powerful binoculars and the very top was visible, or so I thought but dad had to point it out. He knew how special York Minster was for me and he said 'you will always be able to see your second home now from here unless you sell. It is up to you Claire - I won't be here to see it but I'd like to think you would be here.'" (Paragraph 25) and in 2015 "at one point over Grace's first Christmas dad and I talked about a Christmas tree business as we had got a real tree something I had never really had the luxury of before. It led to a conversation about Christmas trees and growing them at the farm in the fields. It was something that I thought would not generate much income and was limited to Christmas. This was a common conversation to have. My dad wanted me to inherit a place that generated income and I was under no illusion

that the farmland were going to me.” (paragraph 40) and “I certainly would not have taken my job in Harrogate so near to my father's farm if I had not believed we were going to live there eventually and inherit the farm.” (Paragraph 45).

234. Though I appreciate the Defence relies upon conversations between Tony and Claire and not what Tony said to others about Claire's inheritance or Claire said to others about these conversations, there are many other witnesses who wish to give his evidence in support of Claire. I start with those closest to her.

Marianne Everett who gave evidence shortly at 3:40 pm is a close friend of Claire over many years since that initial teacher training in September 2005. Though her witness statement summarises the position as “I was never in any doubt of the mutual love and affection between father daughter and granddaughter” (paragraph 7) and records conversation since 2005 with Claire, it appears that Claire never mentioned that Tony had said she would inherit Gilmoor Farm. When she gave oral evidence, I have no doubt she was doing her very best to give straightforward evidence but it does not assist on this issue and I do find it surprising that as close friends she and Claire apparently never discussed Claire's inheritance of the farm on Tony's death.

235. Elizabeth Morgan who gave evidence at about 3.45pm has known Claire since 2002 having met at University. Her witness statement indicates the first occasion on which Claire and her discussed inheritance was: “I remember in early 2012... we often spoke of what we would do to our farms when we inherit them. I wanted to make mine into a livery yard and Claire wanted to be like her father and keep things organic and focused around nature.” (paragraph 4) Later in her statement she does record Claire telling her of seeing York Minster which is where they both qualified but says nothing more of that occasion so far as any conversation between Tony and Claire about inheriting the farm. This is the third instance that Claire relies upon Tony telling her about her right to inherit the farm two years earlier in 2010. When she gave oral evidence at about 3:50 pm about the dates in her statement she fairly and openly admitted “I'm not sure about the years it's my best memory”. I have no doubt she was doing her best to record time and dates of the conversation she had with her friend Claire or that a conversation of that sort took place between them however I am more doubtful about the year she gives. I do not read her evidence to record a particular conversation reported by her friend that had taken place between Claire and Tony in say 2012 or probably after in which Tony made clear that Claire would inherit the farm of his death.

236. Alison Knights has known Claire since 2007 as a friend and a colleague at Wingate Primary School. From her short witness statement which was not challenged and is in very general language, it would appear that her evidence is after 2010 when Claire learnt to drive but would not take a car down to the farm. She says “I recall us having chats about her father's house as he had several acres of land and I keep horses so we joked about what Claire might do with the land in the future as she wasn't sure.” (Paragraph 1) Again, these appear to me to be general casual conversations that colleagues have in the usual way, but Claire doesn't seem to tell her friend that Tony told Claire that when he died, she would inherit the farm. Having said that I acknowledge that this could be implicit in the conversations though that does not necessarily follow.

237. Michael's witness statement under the heading ‘meeting Tony’ in about 2011 says “Tony talked about how he wished Claire could have lived at the farm while she was

growing up but how he hoped she could live there now maybe converting the barn into a house. He asked if I would like to live on a farm and I just replied that it was a beautiful place and would certainly make a nice house” (paragraph 11) and then generally “Tony and I spoke a lot while Claire was not present. He made it very clear that Claire would one day have the farm: he would say things like ‘I would like to see her and Grace grow up there’ and it would be a good place for a child to grow up.” (Paragraph 19) and then having referred to 2015 in another context says also generally “one thing Tony always said to Claire and me is that she would one day own and live at the farm whether it was while he was alive or after. He would often say ‘it will all be hers one day’. Tony had this thing about talking about death.. He would say ‘it will all be hers’ or ‘it will all be hers to do what she wants with it’. I think Tony said this as he knew it needed a lot of work time and money spending on the place. If it was just him and me talking he would say, ‘I hope that you do live there’ or ‘I hope she does live there’. He also talked about gifting the farm to Claire. He told me that he did not want her to lose the farm if it came down to paying inheritance tax.” (paragraph 23).

238. When giving oral evidence at about 3:55 pm he said “I probably went the farm three times.. between 2011 and 2015” and when asked about the conversations between him and Tony when Claire was not present as quoted above said about 4 pm “I spoke to Tony at our house” which in that context I understood to be about 2015. However when he was asked about the constant conversations (quoted in paragraph 23 above) at about 4:10 pm he said “Tony said that for the first time at his house when he told me it would all be hers.. about 2011 not exactly sure of the date.” This of course is different from his witness statement when he first met Tony in 2011 and the discussion was about living in the house not inheriting.
239. I considered Michael to be an earnest and serious witness who I believe was doing his best and was straightforward when dealing with questions though I am not satisfied that he necessarily appreciated the significance of what he said about living in the house and the question of Claire inheriting Gilmoor Farm. I accept that Tony told him that on several occasions about Claire’s inheritance of Gilmoor Farm but equally I am satisfied that the probability is that this was after 2015 when, as is clear from Michael’s witness statement generally and as I have set out above, they had moved into their home and Grace was born.
240. So far as Claire’s recorded conversations with Tony are concerned from 2012 to 2017 in emails and telephone calls what is significant and indeed maybe remarkable by its omission in those documents is any actual reference to Tony telling Claire that she will inherit Gilmoor Farm when he dies or conversations that proceed on that assumption.
241. I have not found the question of Tony’s conversations with Claire that she would inherit Gilmoor Farm entirely easy. I can well understand that when Tony and Claire first met in 2005 it was a very special occasion for both of them and Tony could have said what Claire records in her witness statement but I do not consider that it carries the importance Claire now wishes to attach to it namely that Tony had formed a clear intention in 2005 that he was going to give her the farm on his death that is what in fact he was clearly telling her. There is of course on Claire’s case a four-year gap until the next time Tony raise this matter in 2009 and this generally accords with the frequency of the meeting over this period. The way it is described in Claire’s witness statement seems to me to reflect the reality of the situation which was that it was about them and not property. In giving oral evidence at about 10:55 am Claire said about this event “my relationship with dad was not based on property but persons.”

- and I consider that rightly places that conversation in context. I don't think Claire at that time considered that she was in fact going to receive Gilmoor Farm on her father's death indeed her close friends do not appear to have been told about this at that time. It was only later and possibly sometime around 2013 and probably from about 2015 that there was any reality between Tony and Claire and her inheritance.
- 242.(5) the Defence asserts that Tony and Claire discussed the installation of temporary dwellings on the farm to be occupied by Tony and which Claire could stay in with Grace while visiting. Claire's witness statement deals with this shortly "whilst I was on maternity leave work colleagues express their concern about what I would do on my return and I informed them that we were to convert the stone barn at my father's and live there and that Michael would base a business from there. This notion was common knowledge at school." (Paragraph 45). On the basis of this evidence this would have been in 2015.
243. There was no particular challenge on this matter and indeed it was probably unnecessary having regard to the late date of this conversation between Tony and Claire. I consider this to be another example much in line with the conversations about the viable business ventures which were ideas discussed without any real substance. Claire in due course when Grace was born had understandably taken the view that Grace would not be allowed to go to Gilmoor Farm for health and safety reasons and I have some difficulty imagining how Claire, Michael and Grace would live in a converted barn next to the farmhouse where Tony lived given the state of the farm which is very apparent from the numerous photographs I have considered. I do not consider this takes Claire's Defence any further.
- 244.(6) the last particular in the Defence is that at no time did Tony suggest to Claire that Matthew and James or either them had or would have an interest in the farm or land either by will or otherwise. Claire's statement deals with this matter very shortly and in passing "I remember in or around April 2014.. When dad and I walked around the fields he would talk about the fields and what he had done or not done. I never saw anyone in the fields on these walks apart from my dad apart from once when I saw Jimmy at his caravan. My dad did not talk to me about Matthew and Jimmy renting.." (paragraph 31) Reading Claire's statement as a whole it is clear that Claire did not often go to Gilmoor Farm even after she learned to drive in 2010 and certainly never after 2015 until Tony's death in 2017 and she had therefore little or no opportunity to see Matthew or James.
245. It is equally quite apparent from the emails from 2012 between Tony and Claire that there is little or no mention of either Matthew or James; Matthew was mentioned briefly on three occasions unconnected with farming and James was only mentioned on three occasions of no significance.
246. The reality of the situation is not in dispute between the parties. At no time did Tony introduce Claire to Matthew and James and deal with them as if they were all part of his wider family. By the early 1990s Tony and Elaine's relationship had ended and Claire's contact with him was minimal. In one sense they were not his family and did not know if he would ever meet Claire however he had a quite separate family in another sense in view of the close ties between Matthew and James and their family which he treated Matthew as a son and James considered Tony his uncle and they were at Gilmoor Farm and seeing Tony regularly. It was really only by 2015 when Tony started regularly seeing Claire, Michael and Grace and had another family but this was at Claire's house. This is one of the unfortunate and sad facts that courts often see in probate cases where the parties are simply not talking or dealing with each other. But that appears to be exactly how Tony wished to live his life and no

doubt why this case ends up in court with both parties considering they have legitimate and proper rights to Tony's inheritance.

Summary of Claire's defence to Matthew and James's claim for proprietary estoppel

247. I ought to briefly review the law in addition to what is set out above on the question of the irrevocability of representations or assurances especially in the case of Matthew and a promise to leave the land and buildings on death and in the case of James because this seems important to the particular facts in his case. I am satisfied that the facts in this case as relied upon by both Matthew and James are to be put in a “family” setting in the broad sense and not confined to a commercial context or situation in which Tony and Matthew and James were at arm’s length. In that context the more restrictive interpretation of proprietary estoppel taken in *Cobbe v Yeoman’s Row Management* (supra) does not fit comfortably with the facts of this case as I find them. I totally reject the suggestion that Matthew and James as it was put in 2016 by Tony to Lloyds Bank for the purposes re-negotiating his mortgage that they were “a couple of lads renting a shed”. At the material time in the 1990s and up until about 2013 and probably after Tony considered them as part of his family but he did not feel he could tell Claire.
248. The correct legal analysis in my judgement to the real facts is the earlier approach in *Gillett v Holt* (supra) and subsequent approach in *Thorne v Major* (supra) which generally restored a more flexible approach to the doctrine of promissory estoppel in the family context.
249. The decision in *Gillett v Holt* of Lord Walker (as he became) set out under the heading of ‘irrevocability of assurances’ on page 227 to 229 which quoted briefly: “what makes them binding and therefore irrevocable is the promisee’s detrimental reliance on them. Once that occurs there is simply no question of the promisor changing his or her mind.. (quoting from an article he adopted) ... But the inherent irrevocability of testamentary dispositions.. is irrelevant to a promise of assurance that ‘all this will be yours’.. Even when the promisor’s assurance is in terms linked to the making of a will.. The circumstances may make clear that the assurance is more than a mere statement of present (revocable) intention and is tantamount to a promise... As already noted it is the other party’s detrimental reliance on the promise which makes it irrevocable.” These are the promises that I have found as a fact Tony made to Matthew and James in what is rightly described as a “family” setting on several occasions from the 1990s onwards and on which he acted to his detriment and therefore they are irrevocable as a matter of law.
250. Equally *Gillett v Holt* (supra) where a promise to leave property in a will or on death cannot be revoked later because the quality of the assurance and detriment relied upon are such that the repudiation of the assurance would be unconscionable in all the circumstances as indicated by Lord Walker (as he became) at page 232 “the issue of detriment must be judged at the moment when the person who is given the assurance seeks to go back on it. Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded - that is again the essential test of unconscionability.”
251. The subsequent decision in *Thorne v Major* (supra) endorsed this approach viz “there is nothing special as a matter of principle in relation to a statement about leaving property in a will is against any other statement about one's future actions.” (See paragraph 74)

252. The role of unconscionability in its broad sense of an overarching question given the actual position of the parties involved seen objectively was in fact raised in *Cobbe v Yeoman Management Row* (supra) and the very important part it plays in a claim for proprietary estoppel by Lord Walker at paragraph 92 “unifying and confirming as it were the other elements if the other elements appear to be present but the result does not shock the conscience of the court the analysis needs to be looked at again.”
253. Applying this approach to the facts in this case I am satisfied that in the case of Matthew, the representations made by Tony who treated Matthew as a son was before he was re-united with Claire which in reliance on the detriment he suffered leads me to conclude that Tony should not be allowed to change his mind and subsequently promise Claire the land and barns at Gilmoor Farm and I have formed the view that it would be unconscionable to allow this to happen when the case is considered in the round. I will return to this below. In particular I am quite satisfied as a matter of fact that all the necessary ingredients of representation, reliance and detriment were established so far as Matthew is concerned prior to September or October 2011 and he had an enforceable right in equity to all of Gilmoor Farm but this was reduced probably by variation to the land and buildings only and not the farmhouse.
254. Equally, I am satisfied that the representations made to James by Tony in respect of his plot of land were of a quality made by someone who James considered as an uncle and plainly acted to his detriment such that it would be unconscionable for Tony to be allowed to give Claire this plot of land and have him removed from his house.
255. I am not satisfied on the case brought by Claire that by the time she and Tony in fact enjoyed what became a closer relationship around 2011 and 2012 but more clearly by 2015 after Grace was born by which time Tony may well have started to form a real but belated intention that Claire should inherit Gilmoor Farm but unfortunately it was all too late because both Matthew and James had already acquired in equity a proprietary right which could not be taken away and in the particular circumstances of this case in my judgement it would be unconscionable for Claire to enforce her statutory inheritance rights otherwise.

Relief

256. The Claim Form and the Particulars of Claim seek equitable relief and require a transfer to Matthew of Tony's freehold interest in the land and the buildings and that Claire transfers to James the freehold in the small plot which is his home.
257. As I have set out above, the legal approach I take to their cases is the “minimum equity to do justice” but this does not require me to be constitutionally parsimonious and implicitly I recognise that I must do justice to Claire together with the need to consider the countervailing benefits they have both received. I acknowledge that this can be one of the most difficult aspects of the law of proprietary estoppel and how I exercise my discretion when it comes to the appropriate remedy. I consider James's case to be more straightforward therefore will do that first.
258. Before doing so I will briefly to consider the law on contracts to leave land by will.

The effect of section 2 Law of Property (Miscellaneous Provisions) Act 1989 on James's case

259. The skeleton argument of Bruce Walker proceeds on a narrow and limited analysis of the law: “any contract to leave land by Will falls within section 2 Law of Property (Miscellaneous Provisions) Act 1989 and must be in writing signed by both parties otherwise it is void citing “Lewin on Trusts” 19th Ed paragraph 10-061; Theobald on Wills 18th Ed paragraph 8.34” and “if a contract is void by section 2 the contract/agreement cannot be saved by pleading proprietary estoppel; Theobald paragraph 8.34 citing Lord Scott obiter in *Cobbe v Yeoman Row Management* (supra) at paragraph 29. “Proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement which statute has declared void.” This is essentially a textbook argument which I am quite content to engage in rather than go to primary sources for the purpose of this case.
260. Neither of these two propositions in my judgement fully set out the essence of the matter in dispute. In fact “Lewin on Trusts” deals with proprietary estoppel at para 7 – 037 which appreciates the disagreement between the dicta of Lord Scott and Lord Neuberger in *Thorner v Major* (supra) and specifically cites Snells Equity and Theobald on Wills deals with oral agreements in proprietary estoppel at paragraph 8 – 050 and equally compares and contrasts the approach taken by Lord Neuberger in *Thorner v Major*. It would therefore be wrong to suggest either of these textbooks consider the matter be open and closed law as suggested by Bruce Walker. The reference to Snells Equity in Lewin on Trusts is now in the 34th Ed (150 centenary) is instructive and develops these opposing views with a preference to the latter rather than the former relied on by Bruce Walker.
261. Thus, according to “Snells Equity” 34 Ed (2020) paragraph 12 – 046; “the better view, it is submitted, is the latter. In particular, it should be remembered that section 2, on its express wording, does not purport to deny all legal effects to a promise, or to render an agreement void; it clearly applies only to contractual claims. It might be argued that the policy behind the statute is more extensive, but it has been accepted that the statute does not deny all legal effects to informal agreements and also it has no impact on an acquiescence-based claim... Moreover, there are no examples in case law of an otherwise valid proprietary estoppel claim failing simply because of the effect of section 2. The only practical impact of the first view is that judges have felt obliged to characterise a successful proprietary estoppel claim as giving rise to a constructive trust even if, on the facts the case, there is no suggestion that A in fact holds any right on trust for B. The law would therefore be more transparent if it were clearly established that section 2, as was intended by the Law Commission when proposing the reforms that led the 1989 Act, has no effect on any proprietary estoppel, whether based on A’s acquiescence, representation or promise.” Maybe unsurprisingly “Megarry and Wade The Law of Real Property” 9th Ed (2019) (whose authors were involved with the relevant Law Commission Report) at paragraph 15 – 003- in a slightly different context of part performance and section 2 of the Act- says: “the existence of a valid contract is not a prerequisite to an equity by estoppel and a failed contract does not prevent an estoppel arising... Despite some dicta to the contrary this is not affected the operation of the doctrine of proprietary estoppel (citing *Whitaker v Canary of Bean J* (as he then was) following the review found in the Law Commission Report that led to LPA (MP) Act 1989 section 2 Law Com No 164” and “there is no reason why a claim in contract and to an equity for proprietary estoppel should not arise from the same factual mix providing (if the contractual defect is the absence of writing altogether) and that there is sufficient evidence of unconscionability to justify circumventing the need for formality contracts concerning land however the existence of a valid or failed contract is not a

prerequisite to an equity by estoppel and of course many cases simply do not fit a contractual model.” (para 15 – 038).

262. I favour the approach of “Snells Equity” and “Megarry and Wade” as an answer to the problems raised in “Lewin on Trusts” and “Theobald's on Wills” to the obiter dicta of Lord Scott in *Cobbe v Yeomans Row Management* (supra) and will follow this approach in particular given my findings of fact for the purpose of this judgement.
263. Accordingly, on James's claim I am satisfied that he meets all the requirements of a cause of action in proprietary estoppel irrespective of the fact that there is no agreement in writing for the purpose of section 2 the Law of Property (Miscellaneous Provisions) Act 1989 and this provides no statutory bar to James's case succeeding.
264. This judgement has singularly and consciously focused on the decisions of Lord Walker for the proper appreciation of the law of proprietary estoppel in the knowledge that he also sat in *Cobbe v Yeomans Row Management* (supra) where he considered it not “necessary or appropriate” to express a view on section 2 of the Act (see paragraph 93).

(1) James's relief

265. In this case there is a background to both Matthew and James having caravans on Gilmoor Farm for short periods of time and with the agreement of Tony. Matthew records “my wife Sarah and I lived on the farm in a caravan between the years 1993 to 1995 approximately.” (Paragraph 16) and James says “I returned to the UK without my ex-wife and she joined me a few months later. As we had nowhere to live, I asked Tony if I could place a caravan on his land. Matthew had done this a few years prior and so I thought Tony would be agreeable to this. Tony did agree to this and my ex-wife and I lived in the caravan for approximately two years. Unfortunately due to an electrical fault, the caravan caught fire and burned down.” (Paragraph 7). The position with James's present home is very different as I have indicated above since 2007 viz “my wife and I moved into the caravan two months later and we have been there ever since.” (paragraph 7). The agreement between James and Tony took place in 2012 and therefore by then he and his wife had lived on the small plot for five years. The importance of the agreement between Tony and James in 2012 is that it converted the request made by James to Tony in 2007 to a firm and clear understanding that James would own it and in reliance and to his detriment in around September or October 2012, James bought a twin unit log cabin and installed it on the small plot. Thereafter, and it seems to me from all the evidence that this could be correctly described as his “house”. In giving oral evidence about his previous solicitors draft letter dated 5 June 2017 that referred to a “tenancy” he admitted that the reason that he went along with his previous solicitor's approach (which was not his understanding of their conversation) at 12:35 pm “I was scared of losing my house.”
266. Indeed, that is exactly the approach taken by Claire who was determined that James would lose his house. On 8 December 2017 Grays Solicitors acting for Claire settled a notice to quit sent to James and Matthew which said “we.. hereby give you notice to quit and deliver up possession of all the land and buildings occupied by you at the said Gilmoor Farm on 31 January 2018 or if later the expiry of a period of any tenancy or licence which expires next after four weeks from service of this notice.” The notice in fact only relies on the tenancy as an alternative right to a fixed period for eviction but primarily Claire required James to deliver up to her the small plot of

land in which he had his house. This may be considered a somewhat high-handed approach.

267. I am also unimpressed with a simple calculation of the value of the jeep as compared with the asset that James achieved as a result of the agreement with Tony. While this is a case based on proprietary estoppel and representations the alternative context of an agreement under the usual common law rules and the application of consideration is of course not concerned with such a calculation but with what the parties actually agreed; parties are allowed to make good bad or indifferent deals and the law does not interfere. As set out above it was James's view (rightly or wrongly held on an objective point of view) that Tony got the better end of the deal. Tony was very pleased to have the jeep in 2012 and I accept this evidence.
268. I fully appreciate that James had not "built" a house on the small plot and his house is described as a log cabin though he has built two sheds which were attached to the land. What James wishes however and the relief that James seeks is the transfer of the freehold interest in land which is of course the small plot surrounding his home. So far as the small plot of land is concerned it is abundantly clear from the photographs that James has fenced in his land and within that clear boundary has planted trees, grassed and regrassed the land and done what may be considered objectively as the sort of thing any houseowner would do. This is not a case in which a caravan is pitched without more as had been the case before.
269. The countervailing benefits that James has enjoyed in living on the small plot since 2012 is clear on the evidence. As a matter of record the open market value at 20 December 2019 assuming freehold vacant possession planning permission for agricultural use only and adequate access is provided by Mr Peat at £30,000. Since 2012 James has been using the plot rent-free for which an open market licence fee from 20 December 2012 was £2,100. In some cases including the older case of *Sledmore v Dalby* (supra) the enjoyment of rent-free property could be considered to outweigh any detriment. From that point of view, it could be said that it is not unconscionable for Claire to insist on her strict legal rights. However, the exercise that I need to carry out is a broad enquiry not from a narrow or technical concept and is not a matter of balancing financial gains and losses (see *Gillett v Holt*)
270. Applying *Jennings v Rice* (supra), it really cannot be said that James's expectation is extravagant or out of all proportion to the detriment he suffered in making his house on this small plot of land. I have some real difficulty in imagining what lesser relief I could grant to James to recognise the equity which I am satisfied he has achieved. I suppose I could give a lifetime interest but that would undermine the essence of the promise that it would be his on Tony's death. It seems to me beyond any real argument that he has made this small plot of land his house rather than treating it as one might expect someone who had a lesser interest such as a licence or tenancy or otherwise.
271. I reject Bruce Walker's skeleton argument that relies on James paying no rent, that the jeep was worth less than the land, that the log cabin can be removed as can the sheds or that the equity has expired and that the minimum equity to do justice is provided in a rent-free period that James has achieved or that James failed to provide any evidence to quantify his equity.

(2) Matthew's relief

272. The relationship between Tony and Matthew was clearly special. Matthew provides an insight into this in his witness statement “he was close to my parents and from the age of around eight or nine I used to help him out on the farm. I was never paid for that work but I didn't expect to be paid at that age, it was a useful work experience and a help to Tony” (paragraph 6) and “...Tony told me that I was the cause of some of the conflict between him and Elaine because she was not happy at the way in which Tony treated me. She felt that he treated me more like a son and that he thought more of me and her son Martin and that caused tension between them. It seemed that Elaine was not prepared to accept that Tony had long-standing relationships in his life and this caused him some upset and concern.” (Paragraph 10) By the time Matthew was 16 and had been helping Tony - who did little physical work - milk the cows on the farm Tony gave up farming towards the end of the 1990s and said to Matthew “he told me that I could just have the land as I was farming and working on it and he wanted me to continue..”(paragraph 13) and so far as the buildings were concerned in 1987 “from that point on I always used the barn for my storage”(paragraph 23). It was not just Matthew but also his wife Sarah who looked after Tony “he would often turn up at our house or caravan when we lived on the farm and help himself to food. He clearly felt at home and relaxed to be able to do that and where we could we invited him to eat with us and we plated up food, dinners and sandwiches, pork pies, cheese and desserts so that he could take food home with him”(paragraph 26) and “my wife did Tony's washing regularly which was not an easy task as he did not wash his clothes every week and at times he was very dirty but she tried her best to keep them as clean as possible”(paragraph 27) and “my wife helped Tony to write out Christmas cards for his daughter” (paragraph 30) I am quite satisfied when one looks at the evidence and the whole of the relationship between Tony and Matthew that it can only be assessed as close to a father-son relationship and treating each other as if they were part of the same family starting from the 1980s. Unfortunately, and it is no criticism of Claire, she was not around on the farm or with Tony from when she was born in 1983 until she was 22 in 2005. That is a very long time over which Tony and Matthew developed their special relationship.
273. Whilst this judgement has followed the way the parties have put their case in respect of three constituent elements of a cause of action proprietary estoppel, I well appreciate that it is a flexible jurisdiction and as was said in *Gillett v Holt* which in *Thorner v Major* was described as a ‘masterly judgement’, Walker LJ as he then was said “it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments” and “the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine.” I therefore now review this case with that in mind. Matthew has been using the land and the barns for his farming purposes for a very long time as a result of Tony's special relationship with him which as Matthew said “Tony was in my view a man of his word. I trusted him and I believed him when he told me that the land would be mine and he told me this on many occasions”(paragraph 22). This is really the essence of Matthew's case and I am quite satisfied that it is exactly what Tony told Matthew on those numerous occasions. From that perspective it would be unconscionable to now allow Claire to enforce her statutory inheritance rights as Tony's only daughter which she only achieved on the death of Tony all those years later and require Matthew to be immediately removed from the land and the barns as if nothing had happened. Lying behind Claire's general case is that Matthew was rightly described as “a lad who rents a shed” which is how Tony described the matter a year before his death when rearranging his

mortgage with Lloyds Bank and is on my analytical finding of the facts plainly open to ridicule. I am quite satisfied that Matthew had not only a right to be on the land and in the barns but in equity owned them as Tony well knew because that is what he wanted at that stage in his life and probably all he could then have expected given the unfortunate position of Claire who really cannot be held responsible for the invidious situation created largely by her mother Elaine.

274. The present equity in this case is clear from the record. Gilmoor Farm has proven to be a very valuable asset which on the open market at 20 December 2019 is £330,000 of which £25,000 relates to the farm buildings. Equally and in stark contrast, the value of the land on 20 December 1999 was £86,000 and the difference according to Mr Peat has not arisen as a result of any work Matthew did on the land but it has benefited from an increase in land value quite unconnected to this case.. What is unknown unfortunately is the value of the land in 2011 when Matthew has a reduced expectation to not inherit the farmhouse. If one assumes a straight-line increase the value may be in the region of say £200,000. Then from that point of view it is not that far removed from the value that Claire returned for probate purposes for the farmhouse itself of £150,000 which from any point of view Claire will inherit from Tony. In making this comparison, I fully appreciate that Claire's probate valuation of the farmhouse has no relevance to the basis on which I assess Matthew's position though I deal with this further below.
275. Equally, the present open market rental value is at 20 December 2019 £4,900 per annum. I have little doubt applying the usual rules of yield the rental value in 1999 would have been significantly less. But nonetheless on the basis of the expert evidence alone a rental value for the use of Gilmoor Farm over 20 years and more could as a matter of mathematics accumulate to a sum of £100,000. This can be considered a countervailing benefit that Matthew has received and again as with James, Matthew has achieved a rent-free period so that I could take the view that this outweighs the detriment that he incurred and therefore it would not be unconscionable for Claire to insist on enforcing her strict legal rights. But again, I take a similar view as I did in the case of James by which I need to consider the broad equity not a narrow technical concept balancing financial gains and losses in accordance with the approach of Lord Walker (as he became) in *Gillett v Holt* (supra).
276. As *Jennings v Rice* (supra) which I have quoted extensively above indicates I have to consider the length of time Matthew held an expectation whether this remedy would be unconscionable but "the court must take a principled approach and cannot exercise a completely unfettered discretion according to the individual judges notion of what is fair and in any particular case.". Up until 2011, Matthew expected to have not just the land and buildings but the farmhouse itself (less the small plot given to James in 2012) and it was only in 2011 that Tony told Matthew that he wished Claire to have the farmhouse. Matthew therefore consented to a variation of his expectation which is now valued at £150,000 but at the relevant time was more likely to be a lesser sum. On his own admission, Matthew has had this reduced expectation over the last 8 years as a result of what might be considered as a matter of law a variation of Matthew's expectation (see the dicta in *Thorner v Major* at paragraph 19 which was suggested by Stephanie Jarron as the correct approach as part of a closing note)
277. In Matthew's case it would not be right to make a simple financial assessment on the expenditure he incurred as compared to the benefit he has received in paying the rent, because that was simply not the basis of the relationship Matthew had with Tony and the representations and detriment that were intimately connected. If Tony had wanted

a commercial farmer to turn his farm into the way his neighbours farmed, no doubt he could have received commercial rents of some real value and then looked onto a commercial farm. But Gilmoor Farm has never been since Tony ceased milking in the early 1990s what could be described as a commercial farm, as opposed to a hobby farm which Matthew farmed in the way that Tony wanted and, on the basis that Tony was giving him the farm. Though Claire did not appreciate that Matthew was involved in these farming activities, it would appear that she appreciated Tony was more interested in keeping in touch with nature than a commercial enterprise and Matthew was there for about 20 hours every week for some 20 years farming in the desired way.

278. Despite the approach taken in the Defence and Bruce Walker's skeleton argument which would leave Matthew with nothing I have considered some alternative approaches which have found favour in the particular facts of other cases. I note in this regard that the Claim Form and Particulars of Claim seek in the alternative that I make such orders that the "court thinks fit so as to satisfy the equity created." One option therefore is to grant Matthew a right over the land or some of it and buildings for a term of years or his lifetime (as discussed in *Thorne v Major*) if I formed the view the real relationship between Tony and Matthew was that Tony was only happy for Matthew to farm in his lifetime because of his involvement since he was about eight years old which as Matthew says "I also loved being outside with the machinery and the animals although it was hard physical work." (Paragraph 6). Unfortunately this is how their relationship started but it plainly moved on well beyond that by the time Tony gave up farming and Matthew took the farm over and the numerous promises which were made by Tony to Matthew which would be unconscionable to ignore or indeed put to one side the plain detriment he suffered over a very long time in reliance upon the representation and relationship. Equally I have considered whether Claire should make a payment of money to Matthew in compensation depriving him of the use of the land and the barns. As I have set out above Claire served a notice to quit on both Matthew and James and she appears to wish Matthew to give vacant possession of Gilmoor Farm. However, compensation for deprivation of his land right it is not a reality in this case. Claire is a teacher and her fiancé Michael said of his job at about 4 pm "I am a tree surgeon and do vegetation clearance.. but I'm no more in business." Michael makes it clear that they have bought their own house, but I have no details of the equity situation. Claire has the equity in the farmhouse which was valued for probate purposes at £150,000 and the mortgage to the Bank of Scotland in the sum of £37,004.85 as at the 11 December 2019 was paid off as part of the probate. Apart from the equity that Claire has in the farmhouse in her ability to raise a mortgage to pay compensation to Matthew of the land valued at £330,000, there is no other evidence of Claire's financial position. There is nothing in Claire's witness statement to indicate that she would be prepared to mortgage her farmhouse in order to compensate Matthew for his land. Since this is no part of Claire's case even in the alternative, I consider this to have no basis in reality at all. I am encouraged in this view by the fact that I consider all the discussions between Claire and Tony about what use could be made of the farmland and the buildings had no reality as a viable business. There is also the understandable approach taken by Claire to the health and safety of Grace and it is a matter of fact she has never taken Grace to the farm or the farm buildings given the present unhygienic state. The conclusion I have reached is that Claire's case does not provide any alternative means of equity to Matthew having the land and buildings because in truth none exists. From her point of view it is an all or nothing case.

Unfortunately, on the particular facts of this case, I consider Claire's approach to Matthew that he should have nothing to be unconscionable.

279. The only matter I might consider is some form of restrictive covenant on the land that limits Matthew use of the land to farming and not a sale for profit as the evidence generally points to Tony appreciating that Matthew would farm the land and not selling it. I have no evidence that Matthew would wish to do otherwise so this may not be necessary.

280. I therefore reject Bruce Walker's skeleton argument that any equity has expired by the free use of the land by Matthew, the fact that the expert considered he did not improve the land therefore there can be no detriment and that it is plain that Matthew should not be granted land valued at £330,000 and that any such equity Matthew still has is "miserly" as a result of the present state of the land and the inability of Matthew to produce any evidence of any money spent.

Conclusions

281. I shall make an order in the terms sought by the Claimants against the Defendant in paragraphs 1 and 2 of the Claim Form only.