

Neutral Citation Number: [2014] EWCA Civ 568

Case No: A3 2013 2707

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
CARDIFF DISTRICT REGISTRY
HHJ MILWYN JARMAN QC**

[2013] EWHC 2623 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL
07/05/2014

B e f o r e :

**LORD JUSTICE RICHARDS
LORD JUSTICE UNDERHILL
and
LORD JUSTICE FLOYD**

Between:

EVAN JOHN TEGWYN DAVIES	
MARY EILEEN DAVIES	Appellants
- and -	
ELIZABETH EIRIAN DAVIES	Respondent

**Timothy Fancourt QC and Elizabeth Fitzgerald (instructed by Michelmores LLP) for
the Appellants**

Leslie Blohm QC (instructed by Hugh James) for the Respondent

Hearing date: 4 March 2014

Lord Justice Floyd:

Introduction

1. This appeal arises in connection with a claim by the respondent, Eirian Davies, to be entitled to an interest in her parents' pedigree dairy farm called Henllan in West Wales, or other equitable relief, based on the doctrine of proprietary estoppel. The parents, Tegwyn and Mary Davies, seek to evict Eirian and her family from Henllan, where she is presently living in the farmhouse. As the judge did, I will use the Davies' first names to refer to them, for convenience and without intending them any lack of respect.

2. After a three-day trial on preliminary issues before HHJ Jarman QC sitting as a High Court Judge in Cardiff, it was held that, as a result of Eirian's detrimental reliance on representations made by one or both of Tegwyn and Mary, it would be unconscionable for them to deny her an equity in Henllan and/or the farming business carried on there. By his order dated 22 October 2013, the judge granted a declaration that Eirian had established an entitlement to "a beneficial interest in the farm and/or the farming business". The order provided that the nature and extent of that interest were to be determined at a subsequent hearing.
3. Tegwyn and Mary appeal from that judgement with the permission of Lewison LJ. The core issue in the appeal is whether the judge was right to find that there was any substantial detriment incurred by Eirian in reliance on representations made by Tegwyn and Mary. There are also issues about whether Eirian relied on the representations. Mr Timothy Fancourt QC and Ms Elizabeth Fitzgerald presented the case for Tegwyn and Mary. Mr Leslie Blohm QC presented the case for Eirian. We have been greatly assisted by their clear and economical submissions.

The facts and the judge's conclusions

4. Henllan was purchased by Tegwyn and Mary in 1972. It comprises a farmhouse, an attached cottage, outbuildings and 182 acres of land. It is farmed together with another nearby farm owned by them, Caeremlyn, which they had bought in 1961 and where Eirian and her two sisters were born. Eirian was born in 1968. Henllan and Caeremlyn were together referred to by the judge as "the farm", and I will continue so to refer to them.
5. By 1989 Eirian was the only sister left at the farm, her sisters having departed to follow other paths. Eirian had a passionate interest in pedigree milking cows which was the main business of the farm, and it was by this stage clear that she was the only possible candidate to take over the farm. In the period up to 1989, when she was 21, she was not paid for working on the farm. She was provided with board and lodging and money for clothes and leisure. When she asked about money, her mother, who held the family purse strings, responded that she should not "kill the goose that lays the golden egg". Her father said to Eirian that the farm and the business would be hers one day.
6. The judge held that in this period of four years or so between leaving school and 1989 the benefits Eirian received were substantial, but something less than full recompense for her work on the farm which involved long hours on most days.
7. In 1989, at the age of 21, in the first of many fallings-out with her parents over what they regarded as her unsuitable choice of partners, Eirian left the farm to live with her fiancé, Paul, and stopped working there. She married Paul in 1990. Eirian and her parents reconciled their differences shortly before the wedding, and she returned to work on the farm. There was some dispute before us as to the period during which Eirian was not working on the farm, Eirian contending that it was for a very short period only. It is clear (paragraph 36 of the judgement) that the judge held she was not working at the farm for about two years. I was not persuaded that there was any basis on which we could depart from that finding.
8. Later in 1990 Tegwyn and Mary purchased another, smaller farm called Glascoed. The majority of Glascoed was farmed as part of the farm, but some 20 acres were sold to Eirian and her husband Paul. Eirian raised her own livestock on her land at Glascoed. She continued to work on the farm, milking and doing other work. She was paid for the milking work which she did at the rate of £15 per day, but not for veterinary work, foot trimming, insemination work or general farming. Tegwyn did some work on Glascoed for Eirian, which the judge held did not significantly affect the benefits Eirian was receiving.
9. Commencing in 1997 discussions took place between Tegwyn, Mary and Eirian with a view to bringing Eirian into their farming partnership. Eirian signed a partnership agreement in March

1998 in the expectation that her parents would promptly sign it as well. Upon signing she believed that she became a partner and that she would have a long term future in the business. In the event Tegwyn and Mary did not sign the agreement, either then or subsequently. At the time, an investigation was being carried out seeking to recover sums of money from farmers, including Tegwyn and Mary, who supplied milk under an agreement with Elm Dairies. Tegwyn and Mary decided not to sign the partnership agreement before the Elm Dairy investigation was concluded. The investigation was not concluded until 2005.

10. In 1998 Eirian and Paul sold Glascoed and moved back into Henllan farmhouse which they occupied rent free with their first daughter. When Eirian moved back to Henllan she was, the judge found, still under the impression that her parents had signed the partnership agreement. She did not find out until 2001 that they had not signed it.
11. Whilst Eirian and Paul were living at Henllan from 1998, they made improvements to the farmhouse. For some, but not all of these improvements they were reimbursed by Tegwyn and Mary. There was a dispute about the value of the improvements for which they were not repaid and which the judge resolved by saying that it was of the order of £3,000.
12. In 2001, following another argument with her parents, Eirian and her family moved out of Henllan into a house in nearby Ludchurch. Her parents let out the farmhouse, but paid some of the monies received to Eirian.
13. In the autumn of 2001 Tegwyn and Mary gave instructions to their solicitor in connection with their wills, stating that it was their intention that Eirian should take over the farm in due course, but she was not to have the property outright so long as she remained married to Paul. At that stage they said there was no possibility of her returning to work on the farm. Eventually they signed wills in 2002, at this stage leaving their estate to all three daughters in equal shares.
14. Nevertheless Eirian did return to work on the farm part time in late 2005 or early 2006. In June 2006 she separated from Paul and they were finally divorced in October 2007. She continued to live at Ludchurch, now with her two daughters. She took other part time jobs in order to be able to afford to do so.
15. In 2007 there was yet another argument, provoked by the fact that Eirian had started a relationship with another man. Eirian stopped working on the farm and continued working elsewhere. Also in that year she started working as a technician for a company called Genus which specialised in livestock reproduction services.
16. Tegwyn repeatedly asked Eirian to return to the farm. She eventually agreed and returned to work there. On Boxing Day 2007 she moved back to live in the farmhouse. Tegwyn told her on this occasion that Henllan would be her home, rent free, for life. The judge found that Tegwyn was aware that some encouragement of this nature would be needed to persuade Eirian to come back to Henllan. She gradually did more work on the farm and, in due course, less for Genus.
17. On 16 July 2008 there was a meeting between Tegwyn, Mary, Eirian and the family solicitor and accountant to discuss a proposal to issue 49% of the shares in the farming company to Eirian and to appoint her a director. No agreement was reached at the meeting on the salary to be paid to Eirian, although this was later agreed and paid at £1500 per month, after disclosure of Eirian's outgoings. Eirian resigned her job at Genus and went back to full time work on the farm. Although the documents were not signed, the parties behaved as if they had been.
18. Because Paul was pursuing financial claims against Eirian in respect of their former marriage, it was agreed that the shares would not be allotted to Eirian. Instead her parents would sign draft wills leaving a portion of the farm to Eirian together with the shares in the company. The judge accepted Eirian's evidence that in 2009 she was shown a draft will leaving her the land and buildings and a share in the company with a gift over to her daughter. However Tegwyn and

Mary continued to make changes to their draft wills, culminating in a proposal to place the farm into a trust with the residue to be split between the daughters in equal shares.

19. Also in 2009 representations were made to Eirian at two events on the farm to the effect that the farm would be left to her.
20. In August 2012 a fight took place in the milking parlour between Eirian and Tegwyn. This led to the termination of Eirian's employment and, ultimately, the service of the current proceedings seeking to evict Eirian and her family from the farmhouse.
21. Having looked at the evidence of payments made to Eirian over the years, and other benefits she had received, the judge found that, although these were not insubstantial, particularly during the periods when she had free accommodation at Henllan, they did not amount to full compensation for her contribution to the farming business. The work her father carried out for her at Glascoed did not add significantly to those benefits.
22. The judge also concluded that had Eirian not worked on the farm she would have earned better money elsewhere, in particular at Genus.

The proceedings

23. The present proceedings were commenced on 22 November 2012 seeking possession of the Henllan farmhouse where Eirian was living together with her partner Mark and her two daughters (by then aged 19 and 11). The particulars of claim alleged that Eirian had worked for the farming company, Henllan Farms Limited, as a self-employed herdsman and occupied the farmhouse pursuant to a gratuitous licence which had been terminated. The defence and counterclaim pleaded that an equity arose in favour of Eirian arising out of her detrimental reliance on the representations made by Tegwyn and Mary. She also claimed damages for the assault in the milking parlour.
24. On 23 March 2013 District Judge Godwin made an order for certain factual issues to be tried in the first stage of the proceedings. He made that order by reference to a Schedule of Issues which had been lodged for the hearing. The issues identified by the District Judge were subsequently added to by the agreement of the parties and the trial judge, so that the full list was as follows:
 - i) What, if any, representations were made by the Claimants to the Defendant?
 - ii) If such representations were made when were they made and by whom?
 - iii) If such representations were made was the Defendant entitled to rely on them?
 - iv) How, if at all, has the Defendant relied on the said representations to her detriment?
 - v) Has the Defendant been adequately compensated for improvements made by her to property owned by the Claimants?
 - vi) Has the Defendant been adequately compensated for work carried out, in her role as self-employed herdsman, on behalf of the Claimants?
 - vii) Has the Defendant given up alternative remunerative employment elsewhere?
 - viii) Was the Defendant assaulted by the First Claimant or vice versa?
 - ix) If the Defendant is entitled to an equity of the property owned by the Claimants, has her conduct to date resulted in her entitlement being lost?

25. Other issues were included in the Schedule of Issues but were not directed to be tried in the District Judge's order either as made or as supplemented. Importantly, issue 6 was concerned with whether, if Eirian was entitled to "an equity of the property owned by the Claimants", that interest was a freehold interest, a leasehold interest, a life interest, a shareholding in Henllan Farms Limited or a combination of one or more of these.
26. The order made by HHJ Jarman after the trial of these preliminary factual issues declared that Eirian "has established an entitlement to a beneficial interest in the farm and/or the farming business under the doctrine of proprietary estoppel", with the nature and extent of that beneficial interest to be determined at a further hearing. Mr Blohm QC accepted that this order went further than justified by the order for the trial of preliminary issues if it was taken as establishing that the equity went as far as an entitlement to an immediate beneficial interest in the farm or farming business. He was content for the appeal to be allowed to the extent that the order be amended so as to declare only that Eirian was entitled, under the doctrine of proprietary estoppel, to an equity over the farm and/or farming business. The order so amended would leave to the subsequent hearing the extent of the equity, and the manner in which it is to be satisfied, whether by a monetary payment, a licence to remain in the farmhouse, or in some other way.
27. That concession brings into rather sharper focus the issue with which we are concerned on this appeal. We are not concerned with whether such detrimental reliance on assurances as Eirian had proved meant that it was unconscionable for her to be denied a full beneficial interest in the farm and a share of the farming business. We are concerned, and concerned only with the threshold question, namely whether Eirian's reliance on those assurances was sufficient to give rise to a claim for some equitable relief.
28. In the final paragraph of their written skeleton on this appeal, Mr Fancourt and Ms Fitzgerald submit that such detriment as Eirian is able to prove is not sufficient to entitle her to a share in the ownership of a family farm worth millions of pounds. That may or may not turn out to be correct, but I should make it clear that it is not the issue which now arises on this appeal. Because of the way the case has come before us we are only concerned to see whether the judge was right to hold that the threshold for the grant of some equitable relief had been crossed.

Proprietary estoppel – principles

29. In *Thorner v Major* [2009] UKHL 18; [2009] 1 WLR 776 Lord Walker of Gestingthorpe pointed out that whilst there was no universal definition of proprietary estoppel which is both comprehensive and uncontroversial, most scholars agreed that:

"...the doctrine is based on three main elements, although they express them in slightly different terms: 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 (see Megarry & Wade, *Law of Real Property*, 7th edition (2008) para 16-001; Gray & Gray, *Elements of Land Law*, 5th edition (2009) para 9.2.8; Snell's *Equity*, 31st edition (2005) paras 10-16 to 10-19; Gardner, *An Introduction to Land Law* (2007) para 7.1.1)."
30. Whilst these three elements are useful for the purposes of analysis and structured decision-making, they are not to be treated as watertight compartments. As Robert Walker LJ (as he was then) said in *Gillett v Holt* [2001] Ch 210:

"... although the judgement is, for convenience, divided into several sections with headings which give a rough indication of the subject-matter, 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. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is

a distinct need for a ‘mutual understanding’ may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round.”

31. Robert Walker LJ went on to explain at page 232 D-E that the concept of detriment for the purposes of this doctrine is not a narrow or technical one. He said:

“The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.”
32. Two further principles emerge clearly from that case. Firstly, whether the claimant has suffered detriment must be judged at the point where the person who gave the assurance seeks to go back on it. Secondly, whether the detriment is sufficiently substantial must be judged by whether it would be unjust or inequitable to allow the assurance to be disregarded: *Gillett v Holt* (above) at 232E-F.
33. Whether there is detrimental reliance in any given case is an evaluative judgement on the facts, which normally lies within the exclusive province of the trial judge. This court can only interfere with the judge’s assessment of that issue if it is perverse or clearly wrong: *Suggitt v Suggitt* [2012] EWCA Civ 1140 per Arden LJ at [37].

The arguments on appeal

34. Although the main focus of the submissions which we heard on this appeal was the requirement for Eirian to show detriment, the appellants first submit that the judge was wrong to hold that Eirian relied on the representation in about 1985 that “the farm would be hers one day”. They point to the fact that she left the farm and stopped working there for two years from 1989 to 1991. As Eirian had accepted that it was implicit that, in order to benefit from the representation, she would have to work in return, she cannot have relied on the representation.
35. The appellants next point to the fact that, when Eirian did return to work on the farm in 1991, the judge made no express finding that this was in response to any further representation made by Tegwyn or Mary. There can therefore have been no detrimental reliance by Eirian in the period 1991-1998 when she signed the partnership agreement and was assured that she had a long term future on the farm.
36. The appellants submit that the judge was wrong to hold that working for remuneration and other benefits that did not fully reflect the value of Eirian’s contribution to the farm was of itself detriment, when the proper question was whether, by relying on the representations she gave up the chance to be better remunerated elsewhere. They rely on a passage in the judgement of Morgan J in *Creasey v Sole* [2013] EWHC 1410 (Ch) at [111]:

“In order to determine whether [the claimant] acted to his detriment in reliance on some promise or assurance, it is necessary to consider what alternative course or courses might have been open to him. If the arrangement which he had with his parents was profitable to him but he gave up the opportunity of a more profitable alternative, then a decision, in reliance on a promise or assurance, to stay with the arrangement could be said to be detrimental to him. Conversely, if there was no better alternative available to Michael other than the arrangement which applied as between himself and his parents, then the continuation of that arrangement would not amount to a detriment to Michael and that would be so whether the arrangement was profitable or unprofitable. In the past, particularly in the case of a party who takes on or continues with an unfavourable arrangement, the courts have been prepared to take the view that the party must surely have had better opportunities, which he has foregone, to his

detriment. Such an approach was adopted in the cases of *Gillett v Holt* [2001] Ch 210 (see at 235 A-B), *Thorner v Major* [2009] 1 WLR 776 (see at [4]) and *Henry v Henry* [2010] 1 All ER 988 (see at [61]). In *Henry v Henry* ... , the Privy Council said that it was appropriate to weigh the benefits which a party obtained by relying upon a promise or assurance against the disadvantages which resulted from such reliance.”

37. The appellants say that with the exception of the judge’s findings about Eirian giving up employment with Genus in 2008, there was no finding and no evidence that the defendant gave up a better opportunity elsewhere. When properly analysed, particularly in the light of further evidence which they wished to adduce, her employment with Genus was not as lucrative as the judge had found. The evidence showed that in fact, when not working at the farm, Eirian had done less well, all things considered, than she had done whilst working there. They also submit that, when living on the farm in the farmhouse, Eirian was receiving a benefit which the judge failed to take into account.
38. Mr Blohm QC supported the judge’s findings, which he emphasised were evaluative findings reached after a long trial and with the benefit of seeing the witnesses. He also discouraged us from indulging in too much salami slicing of the historical narrative, rather than adopting the holistic approach advocated in the cases. He submitted that it was wrong to infer from the fact that Eirian left the farm between 1989 and 1991 that she was not relying on representations made to her up to 1989 or when she returned in 1991. She left because of arguments with her parents: when those were resolved, the parties’ relationship was restored on the same basis. He submitted that, on the strength of the repeated representations which the judge found, Eirian had worked long hours for low wages in a difficult working relationship, when her qualities and skills would have enabled her to make a better life elsewhere. On that basis, he submitted that Eirian had suffered relevant detriment.

Discussion

Reliance

39. I consider first the question of whether there was any reliance on the representations made that the farm and farming business would be Eirian’s one day. At paragraph 57 of his judgement the judge says this:

“As I have indicated, Eirian to her credit did not assert that she placed reliance upon any representations before leaving school. However, when she did, in the circumstances described above it was reasonable for her to contemplate whether her future lay on the farm or elsewhere and to rely upon the representations which I have found were made, She accepted in evidence that she would have to work in return.”
40. Read in context the judge is finding that Eirian did rely on the representations made by her parents, and her reliance on those representations was reasonable. Mr Fancourt submitted that the fact that she “walked out” on the farm in 1989, coupled with the fact that up to that point she was receiving board and lodging at home, shows that she could not have been relying on the representation. I do not see why that is so. Eirian left the farm in 1989 because her parents disapproved of her boyfriend. Up to that point she was led to understand that if she did not leave home, but continued to work on the farm and show her commitment to it, it would be hers one day. That was a conclusion plainly open to the judge. It was not perverse or plainly wrong.
41. Mr Fancourt also submits that when Eirian returned to work on the farm the relationship with her parents did not simply resume where it left off. It was therefore wrong of the judge to hold, if he did indeed so hold, that there was continued reliance on the 1985 representation in the period after 1991. He draws attention to the fact that Eirian’s pleaded case was not that there was resumption of the previous reliance, but that fresh representations were made on Eirian’s

return. As the judge made no findings about those fresh representations, the court should conclude that there was no operative representation after 1991 and before 1998.

42. In my judgement this argument reads too much into the judge's failure to make positive findings about the various pleaded representations from 1991 onwards. The assurances given to Eirian about her future inheritance were tied to her working on the farm. When dealing with whether the reliance she had placed on the representations was to her detriment, the judge took account of the fact that between 1991 and 1998 Eirian did work on the farm, including veterinary work, foot trimming, insemination and general farming work for no extra pay over and above what she was paid for milking. He would scarcely have done so if he thought that there was merit in the suggestion that during this period there was no operative representation.
43. Eirian's evidence in her witness statement about this period was in the following terms:
 - "29. After I had moved to Glascoed, I started to receive a small income from my parents for work at Henllan. Between 1990 and 1997 (aged 22-29) they paid me around £5000 per annum.
 30. I was paid £400 a month, calculated at £15 per day, seven days a week. It worked out at about £1 per hour as I worked 10-14 hours per day. The work included veterinary work, foot trimming, insemination work and general farming work. I received no payslips. I paid no tax. I was paid by cheque into our joint account. Paul worked as an agricultural salesman and we relied on his income. This continued to 1996.
 31. Whenever I raised my level of income with my parents, which I often did, I was told that the farm was to be mine one day and not to "kill the goose that laid the golden egg."
44. Given that the judge has expressly accepted and relied on the parts of this evidence which deal with detriment, it seems to me most unlikely that he was not also necessarily accepting Eirian's evidence that her acceptance of her level of pay was expressly coupled to the representation that the farm would one day be hers. The judge was plainly holding that there was detrimental reliance on the representations once Eirian resumed working for her parents.

Detriment

45. The recurring theme of Mr Fancourt's submissions in this area was that although the judge made findings that Eirian received less than full recompense for working on the farm, these did not themselves amount to detriment to her unless it was shown that she could have done better elsewhere. As the judge's conclusion was that the detriment to Eirian was exclusively financial, he submitted that it was essential to see whether there was any evidence that, had Eirian pursued an alternative career, her earnings would have been greater. His finding that she could have earned more at Genus was clearly wrong.
46. In his written submissions Mr Fancourt asserts that underpayment is endemic in the farming industry and that farm workers are paid far less than if the value of their work to the business were assessed. He suggests that the judge fell into the error of comparing Eirian's value to the business with the wages she could have earned at Genus or elsewhere.
47. The judge stated his conclusion as to Eirian's earnings at paragraph 69 of his judgement in this way:

"Furthermore, in my judgement had Eirian not worked on the farm, it is likely that she would have earned better money elsewhere."
48. The judge then explains that there was an issue as to whether Eirian would have earned £64.04 per day as a casual technician at Genus, as the documents showed, or whether, as she asserted,

she was after a trial period promoted to a reproduction management specialist (RMS) earning £100 per day. The judge accepted Eirian's evidence, supported by that of a fellow technician, that she was an RMS technician. The judge held that "latterly" she was earning £100 per day, but not that she was earning up to £2500 per month as she had asserted.

49. The judge at paragraph 71, accepted the following part of Eirian's evidence as "vivid and genuine":

"She loved her job at Genus. She loved meeting people. She started work there very early but usually finished early in the afternoon, and she was able to go with her children after school to the beach which was near to the Ludchurch property, whereas she would have been milking at that time at Henllan. She also made reference to the difficult working relationship with her parents ... In my judgement, her earnings at Genus were, or were capable of being, substantially more than she was paid at Henllan and for substantially less hours, and is a good indication of the career which she otherwise is likely to have had."

50. It seems to me that in that passage the judge is holding that the detriment to Eirian is, contrary to Mr Fancourt's submission, not exclusively financial. The judge is using Eirian's work at Genus as an illustration – "a good indication" as he put it – of how Eirian would have fared freed of her obligations on the farm. She would have been able to work shorter hours in a working environment of her choosing. Furthermore, she would have been free of the difficult working relationship she had with her parents.

51. Viewed in that way, estimation of the detriment suffered by Eirian was not an exercise in forensic accounting as at times Mr Fancourt's submissions made it appear to be. This was not a case where there was any serious question mark over Eirian's ability to obtain employment elsewhere. As Mr Blohm demonstrated to us, there was abundant independent material before the judge that Eirian was no ordinary farm worker. Her employment review at Genus described her as a person of infectious enthusiasm with excellent stockman skills. The judge found that her skills were, over the years, a significant contributor to the success of the Holstein herd at Henllan. He found that:

"The preponderance of the evidence was that Eirian was hardworking, passionate and skilful in respect of the milking herd... It confirms the strong impression which I gained when she was giving her evidence. Her father, in his evidence accepted that she had been complaining "since school" about the long hours she was working."

52. The further evidence which Tegwyn and Mary sought to adduce before us confirmed that Eirian had not yet achieved RMS status at Genus in the short period she had been there and was not earning £100 a day: she was earning £75 per day plus expenses. We looked at the further material in the course of the hearing for the purposes of assessing its admissibility. Even if the evidence were admitted and taken at its highest, it would not in my judgement significantly undermine the judge's assessment of the detriment to Eirian. Eirian's employment by Genus as a reproduction specialist was "a good indication" as the judge held, of the career she might have followed if free from her obligations at the farm. Such a career would not have involved the long hours she worked on the farm in a difficult working relationship.
53. I do not think the judge fell into the error of comparing Eirian's value to the business with her wages. The way he expressed himself when dealing with her employment with Genus indicates to me that he was making the correct comparison.
54. I also reject the appellants' submission that the judge did not take account of the benefit to Eirian of the compensating advantages when living on the farm. The judge expressly referred to the benefits of accommodation at Henllan e.g. at paragraph 67 of his judgement. Once it is appreciated that the detriment to Eirian was not purely financial, the judge was not bound to quantify the benefit of free accommodation at Henllan. It was a factor he had to keep in mind in

the evaluative exercise in which he was engaged. When dealing with the reasons for Eirian's move back into Henllan and the representation which induced it the judge said this:

"I accept that although Eirian agrees that she and her daughter loved the milking herd at Henllan, she also loved the lifestyle at Ludchurch and her job at Genus. She also had in mind the difficulties there had been in working with her parents in the past. In those circumstances I do not accept the submission that it is unlikely that her father promised her a rent free home for life, and more likely that he was aware that some encouragement of this nature would be needed to persuade her to come back to Henllan."

55. The judge had to determine whether there was substantial detriment by contrasting the rewards of the job at Genus with its better lifestyle with those of working on the farm (including the free accommodation at Henllan) with its greater burdens in terms of working hours and more difficult working relationships. I am not at all persuaded that his conclusion as to where the scales came down in this balancing exercise was wrong.
56. The judge's conclusion that there was net detriment to Eirian was one to which he was entitled to come. It was the result of a classic evaluative exercise which he performed with care. The evaluation is not flawed in a way which would justify this court in interfering.

Conclusion

57. I would therefore allow the appeal, but only to the very limited extent indicated in paragraph 26 above.
58. I would finally observe that, whilst the case management of this case was not something with which we were directly concerned on this appeal, I have doubts about whether the list of essentially factual preliminary issues, coupled with a split trial procedure, would normally be appropriate in a claim for equitable relief based on proprietary estoppel. As Walker LJ's observations in *Gillett v Holt* (above) make clear, such claims require a holistic approach which the procedure adopted here did not facilitate.
59. This is in many ways a tragic case. As the judge observed, the bitterness between the parties was such that each had few, if any, good words to say about the other. The fact remained, however, that between them they had over the years built up "by hard work, great skill and passionate dedication a prodigious Holstein pedigree milking herd and a highly successful business". It is greatly to be hoped that they might now be able to resolve such remaining differences as they have in relation to Eirian's entitlement without recourse to further costly and divisive litigation.

Lord Justice Underhill

60. I agree.

Lord Justice Richards

61. I also agree.