

Case No: 1BS30953

Neutral Citation Number: [2016] EWHC 1791 (Ch)

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

BRISTOL DISTRICT REGISTRY

Bristol Civil Justice Centre
2 Redcliff Street
Bristol BS1 6GR

Monday, 11 April 2016

BEFORE:

HIS HONOUR JUDGE McCAHILL QC

BETWEEN:

JOHN RONALD HAM

Claimant

- and -

**(1) JEREMY BEVAN BELL
(2) KEITH HARDEN TURNER
(3) LORNA JEAN HAM**

Defendant

Digital Transcript of WordWave International Ltd trading as DTI
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
Email: courtcontracts@dtiglobal.eu
(Official Shorthand Writers to the Court)

IAN PARTRIDGE (instructed by Stokes Partners) appeared on behalf of the Claimant

STEPHEN JOURDAN QC (instructed by Michelmores LLP) appeared on behalf of the Defendant

Judgment Approved

No of words: 9,981
No of folios: 138

JUDGE McCAHILL QC:

Introduction – The Ham Family and the Old and New Partnerships

1. This is a distressing farming partnership dispute between a son, the Claimant, John Ham, and his parents, the original Defendants, Ronald and Jean Ham. Tragically, Ronald Ham died on 10 July 2015 in an accident on the farm during the subsistence of this litigation, which was commenced by a claim form issued on 27 October 2011. Ronald's executors, including Jean Ham, have been substituted for him as a Defendant.
2. Ronald and Jean married in 1967 and have been dairy farmers all their lives. In 1986 Ronald and Jean bought their first farm, River Farm, Godney, which they sold in 1986 in order to buy in their own names the farm, the subject matter of this dispute, namely Lower West Barn Farm, Witham Friary, Frome, Somerset ("the farm").
3. The farm comprises the farmhouse, farm buildings and originally 220 acres. The farm grew to 900 acres of which 350 acres were rented and 550 owned in the names of Ronald and Jean Ham.
4. Ronald and Jean carried on their farming business in partnership ("the old partnership") between 1967 and 1997.
5. They have three children: Judith, now 45; Catherine, now 43 and the Claimant, John, now aged 37 years.
6. All three children worked on the farm from a very early age; in John's case since he was about eight. Judith left home when she married in 1986 or 1987 as did Catherine when she married in September 1997. Catherine's weekly wage before she left was about £220 per week, plus her keep, and John's was between £60 and £80 per week plus his keep.
7. Judith has become estranged from her family, although Ronald and Jean allowed her, after her marriage, to graze her sheep and cattle on farm land.
8. This was a traditional farming family in which all members worked from an early age on the farm, albeit in the belief, as happened, that the daughters would marry and live elsewhere, and with the hope or belief that their only son would carry on farming at the home farm.
9. After Catherine's marriage in 1997 only John remained at home with his parents.
10. John had left school at 16 to work full-time at the farm. He was about 19 and a half years old when Catherine got married.
11. Ronald and Jean decided to make him a partner in the family business which they did with effect from 1 October 1997, trading under the name RW and LJ Ham & Son. The written partnership agreement ("the new partnership") was made between John and his parents on 15 December 1997. At some later stage, Ronald and Jean also gave John about two acres of land with planning potential for his own ownership. That land had been bought with new partnership money.

The Issues

12. The central issue which I have to decide is whether the farm, comprising the farmhouse, buildings and land, as at 30 September 1997, undoubtedly assets of the old partnership, became assets of the new partnership at its commencement on 1 October 1997, because of their appearance in the accounts of the new partnership for the years 1998 to 2003.
13. John's case is that they did. His parents' case is that they did not and that the error in those accounts was rectified in the accounts for the years 2004 to 2008, all of which latter accounts John had signed, except for the 2004 accounts. Moreover, it was the case of Ronald and Jean that John always knew that they did not intend to make the farm and those buildings and land new partnership assets, when they brought him into the new partnership.

14. It is not John's case that there was any express agreement between him and his parents that the farm would become an asset of the new partnership.
15. Rather, he relied upon an implied agreement to that effect to be inferred from the conduct of the parties. Specifically, he relied on the accounts of the new partnership which, between the years ended 28 February 1998 and 28 February 2003 (none of which had been signed in manuscript by the parties or any of them), included the farm as an asset of the partnership. Those accounts credited one half of the historic cost of the farm (about £696,000) to the partnership accounts of Ronald and Jean.
16. Accordingly, the central issue which I have to decide has been broken down into sub-issues, although there is a dispute over whether one aspect of the third sub-issue arises on the pleadings.
17. Those sub-issues are as follows:
18. First, does the inclusion in the accounts for the years ending 28 February 1998 to 2003 of figures representing the historic cost of the farm mean that it was an asset of the new partnership or was that simply an accounting error that was put right in the accounts for the years ending 29 February 2004 (a leap year) and subsequently?
19. Secondly, if those accounts did have the effect of making the farm an asset of the new partnership, was this the result of a mistake which Ronald and Jean could have had rectified? If so, should they be read as if rectified or should the court make a formal order for rectification? John has sought permission to amend in closing speeches to allege that Ronald and Jean had in fact signed the accounts for the years ended 2002 and 2003, which accounts showed the historic cost of the farm in the balance sheet. I shall deal later with that application.
20. Thirdly, does the fact that John and his parents signed the accounts of the new partnership for the years ending 28 February 2005 to 2008 – none of which show the farm as an asset of the new partnership – mean that he is not now entitled to claim that the farm was an asset of the new partnership? Ronald and Jean rely on clause 3.5 of the Partnership Agreement to say that it is now too late to re-open those signed accounts. John has sought to re-open those signed accounts on the grounds that his parents were guilty of dishonourable conduct in concealing material information from him relating to the 2004 accounts. The Defendants have argued through Mr Jourdan QC that the contention of dishonourable conduct has not been pleaded and that it is now too late for me to grant the application (also made in closing speeches by Mr Partridge on behalf of John) for permission to amend to enable John to allege dishonourable conduct against his parents, thereby opening the door to the rectification of the signed accounts for the period 2005 to 2008.

The Partnership Accountants

21. There was a change of partnership accountants during the new partnership.
 22. The accountants for the old partnership and for the new partnership up to the years ended February 2001 were Hucker & Booker. In the main, Mr Pritchard acted for the Defendants and John at that time.
 23. For the accounts ended February 2002 and 2003 the accountants were Chalmers HB.
 24. The accounts between the years ended 29 February 2004 and 28 February 2009 were prepared by Margaret Scarrott, an accountant and partner in the firm of Moore Scarrott.
- Did Ronald and Jean sign the 2002 and 2003 accounts? The Application to Amend
25. In the accounts to February 2002 and 2003 the names of John and his parents had been typed on that page of the accounts dealing with the approval by the partners of those accounts. However, none of the parties – John, Ronald or Jean – had applied their own manuscript signature above their typed name.

26. I am satisfied that these names had already been typed in by the accountants when they sent those accounts to John, Ronald and Jean for signature and approval. I also infer that from the fact that on the same pages the name of the accountants too was typed in, but above the accountants' typed name someone had written in manuscript "Chalmers HB".
27. Mr Partridge, counsel for John, sought to raise during the trial the argument that the Defendants had adopted (and so signed) their typed names by authorising the accounts to be sent to the Revenue and that somehow this converted their typed names into a "signature" by the Defendants.
28. This allegation was not raised on the pleadings or in the amended position statement filed on John's behalf, dated 4 November 2015.
29. Mr Partridge applied in his closing submissions for permission to amend to allege that the Defendants had in fact signed the accounts for the years ended February 2002 and 2003 and, therefore, were bound by them in accordance with clause 3.5 of the Partnership Agreement, with the result that those accounts showed the farm in the fixed assets of the new partnership. That application was opposed by Mr Jourdan.
30. I refuse the application to amend. It is made far too late. Moreover, in order properly to investigate the factual background to those alleged "signatures" further evidence might be required and of course Ronald Ham is no longer able to give live evidence and John himself gave no evidence about it.
31. In any event, even if the matter had been properly before the court, I would have held that for the purpose of clause 3.5 of the Partnership Agreement (to which I shall later turn), the deemed conversion of a name – typed by accountants before presenting the accounts to the parties – into a "signature" for the purposes of clause 3.5 is an argument doomed to failure: see Firstpost Homes Ltd v Johnson & Ors [1995] 1 WLR 1567 at 1574, per Peter Gibson LJ; and 1576G-H, per Hutchinson LJ.

Clause 3.5 and the re-opening of signed partnership accounts

32. Clause 3.5 of the Partnership Agreement deals with the finality or reviewability of accounts once signed. It is in the following terms:
- "The financial year of the partnership shall end on 28th February each year and an annual balance sheet and profit and loss account shall be prepared as at that date and as soon as possible afterwards showing what is due to all partners in respect of the capital and profits of the partnership. Such balance sheet shall forthwith be signed by all partners who shall be bound by the contents of the balance sheet and the profit and loss account unless the manifest error is found within six months after he or she has signed in which case such error shall be rectified."
33. Mr Jourdan submitted that even if there had been an implied agreement at the outset to make the farm an asset of the new partnership, John's signature on the 2005 to 2008 accounts, in which it is not so shown, precludes John from contending that the farm is still an asset of the new partnership.
34. In relation to clause 3.5 Mr Partridge drew my attention to paragraph 1075 of Lindley and Banks, which quotes the words of Lord Lindley on the subject:
- "A provision to this effect is extremely useful and should never be omitted, but however stringently it may be drawn no account will be binding on any partner who may have been induced to sign it by false and fraudulent representations or by ignorance of material circumstances dishonourably concealed from him by his co-partners. Where, however, all parties act bona

fide such clauses are operative, but the usual provision as to manifest errors applies only into errors in figures and obvious blunders not to errors in judgment, eg in treating as good debts which ultimately turn out to be bad or omitting losses not know to have occurred. All errors are manifest when discovered, but such clauses are as those referred to here are intended to be confined to oversights and blunders so obvious as to admit of no difference of opinion.”

That passage was cited with approval by Lord Reed in Montgomery v Cameron & Greig [2007] CSOH 63 (OH) at paragraph 28 .

35. Mr Partridge relies on that quotation from Lindley and Banks in support of his application to re-open the accounts from 2005 onwards, which had been signed by John and from which the historic cost of the farm has been removed. I shall return to deal with this application to amend to allege dishonourable conduct by concealment later on.

Treatment of Improvements and Acquisitions in the 1998 to 2003 Accounts

36. In further support of his contention that the accounts between 1998 and 2003 demonstrated the implied agreement that the farm was a partnership asset, John relied upon the fact that the cost of improvements to the land and buildings carried out using partnership money after 1 October 1997, together with the purchase price paid in 2000 for some 57 acres of land for £99,222 also using partnership money had been added to the farm’s historic cost in the balance sheet of the new partnership. In turn, those costs of improvement and acquisition were directly or indirectly credited to the partnership of talents of John and his parents in accordance with their partnership share.
37. In relation to that contention, Mr Jourdan submitted that it often happens that a partnership which is using land belonging to one or more partner pays for works to the land or for replacements or additions to fixed equipment on the land. In those circumstances when the court is winding up the partnership it has power to direct that the non-owning partner is given credit in respect of their contribution to the payments if that is necessary to avoid injustice. He then referred me to Blackett-Ord & Haren Partnership Law 5th Edition 2015 at paragraph 8.21, to Burdon v Barkus (1862) 4 De GF&J 42, Pawsey v Armstrong (1881) 18 Ch. D. 698, Miles v Clarke [1953] 1 WLR 537 and to Davies v H & E Ecroyd Ltd [1996] 2 EGLR 5.
38. Therefore, he argued that the fact that some improvements were paid for out of partnership funds does not imply that the farm was agreed to be a partnership asset. He submitted that Ron and Jean were making the farm available rent free for the new partnership to farm. John did not have to pay or contribute to any rent for the use of the farm. It was, he submitted, in the interests of the partnership business that improvements should be made from time to time to the fixed equipment on the farm and so naturally the partnership paid for those. They enabled the partnership to make the profits in which John shared. To the extent that injustice would otherwise result to John by allowing partnership money to be used for those improvements and acquisitions, Mr Jourdan pointed out that Mr Shelton, the expert appointed to assess the value of improvements after this case, has power to credit John with either his share of the expenditure or a proportion of the value added to the farm by the making of improvements.
39. In his closing submissions Mr Jourdan relied heavily on Burdon v Barkus where Burdon held the lease of a mine and in 1845 went into partnership with Barkus, his colliery manager. In 1857 Barkus, to Burdon’s knowledge, spent a considerable amount of the

partnership's money in sinking a new pit. The following year Burdon dissolved the partnership. Barkus argued that the partnership was coterminous with the lease and could not be dissolved until the lease came to an end and that the lease had become a partnership asset. The Vice Chancellor rejected both arguments and on appeal the Lords Justices agreed. The argument for the defendant Barkus was that agreement was to be inferred from a course of dealing. Turner LJ, with whom Knight-Bruce LJ agreed, said that the burden of proving an agreement was on the defendant Barkus and that he had failed to discharge that burden. Having held that there was no express agreement, he then said that Barkus had no interest in the mine, there being no foundation for any claim on his part to any such interest other than by virtue of the Partnership Agreement which he had failed to prove. He then went on to consider the inquiry which had been directed by the Vice Chancellor into whether any sum ought to be allowed to Barkus in respect of the expense of sinking the new pit. He held that this inquiry had been correctly directed because the court had a wide power on the dissolution of a partnership to ensure that no injustice was caused where the partnership had of necessity expended money on an asset owned by one of the partners. A clear exposition of those principles is summarised in Davis v H & E Ecroyd [1996] 2 EGLR 5 at 8.

40. I accept Mr Jourdan's submission that the treatment of these improvements and purchases in the 1998 to 2003 accounts did not establish or corroborate any implied agreement that the farm was or became a partnership asset. In any event, John has failed to satisfy me that they did establish or confirm any such agreement. Ronald and Jean were making the farm available rent free for the new partnership to farm and John was not called upon to pay or contribute any rent for the use of the farm. It was in everybody's interests that improvements should be made from time to time to fixed equipment on the farm and so naturally the partnership paid for those, thereby enabling it to make profits in which all partners shared.

How is any implied agreement based on the 1998 to 2003 accounts to be established?

41. In Geary v Rankine [2012] 2 FLR 1409 at paragraph 15, Lewison LJ said:

"The mere fact that there is a partnership in profits produced by a particular asset does not indicate that the asset itself is partnership property. It is a commonplace that one partner may own the property in which a partnership business is carried on. If the asset is acquired with profits generated by the partnership, that is a different proposition..."

42. To the same effect in Singh & Co v Nihar [1965] 1 WLR 412, Lord Pearce quoted with approval from the 19th Edition of Lindley & Banks as follows:

"...it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to a lease to the firm, or without any lease at all."

43. It was drawn to my attention during submissions that it is common for farming partnerships to farm land owned by one or more of the partners without the land being a partnership asset. For example, at paragraph 8.15 the learned authors of Blackett-Ord & Haren on Partnership Law (5th Edition 2015) state:

"Often (especially in farming partnerships) the most valuable assets used by the firm are owned by some or all of the partners outside their capacity as such partners".

44. Section 20 of the Partnership Act 1890 provides that all property originally brought into the partnership stock is called 'partnership property' and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the Partnership Agreement. The legal estate of any such partnership property is held in trust so far as necessary. The persons beneficially interested in the land under the section. However, section 20 does not assist here, because it does not tell one how to decide if a particular item of property was, within the wording of section 20, "brought into the partnership stock".
45. Nevertheless, it is clear from Miles v Clarke [1953] 1 WLR 537, a case where there had been no express agreement as to what was partnership property, that property owned by one or more partner at the start of the partnership will only be treated as brought into the partnership stock if it is expressly or impliedly agreed between the partners. In that case it was said:
- "These parties and their advisors so far as they thought about it at all always contemplated that the lease, the equipment and the studio furniture and stock in trade would all be brought into the common pool and there is an indication to that effect, but the fact is that nothing was ever finally agreed about it..."
- "No more agreement between the parties should be inferred that is absolutely necessary to give business efficacy to that which has happened."
46. Mr Jourdan's submission, which I accept, is that in a farming partnership such as this it is not necessary to imply that the farm on which crops grow or animals are grazed is an asset of the partnership. Such a partnership can work perfectly well on the basis of the land-owning partners making the land available to the partnership for the use of a partnership business so long as it continues and that could happen perfectly well and naturally without any change in the ownership of a farm.
47. He also drew my attention to the case of Eardley v Broad [1970] 215 EG 823, where a partner held a tenancy of a farm and then went into partnership. The court concluded that the mere fact that the partnership paid the rent under the tenancy did not make the tenancy a partnership asset, but, given that the partnership was using the land, it was only natural and right that it should indemnify the partner who was the tenant in respect of that rent.
48. Of course, any court which infers or implies an agreement is doing so on the basis of outward and objective signs or appearances of such an implied agreement. Yet, the law does not impose an agreement on parties where subjectively neither of them intended to create one, even if objectively it appears as if an agreement was made.
49. The learned authors of Chitty on Contract at paragraph 2170 explain the law clearly and correctly as follows:
- "In deciding issues of contractual intention, the courts normally apply an objective test: for example, where the sale of a house is not "subject to contract", both parties are likely to be bound even though one of them subjectively believed that he would not be bound until the usual exchange of contracts had taken place...
- The objective test is, however, here (as elsewhere) subject to the limitation that it does not apply in favour of a party who knows the truth. Thus, in the house sale example given above, the party who did not intend to be bound would not be bound if his state of mind was actually known to the other party. Nor could a party who did not in fact intend to be bound invoke the objective

test so as to bind the other party to the contract: to permit this would pervert the purpose of the objective test, which is to protect a party who has relied on the objective appearance of consent from the prejudice which he would suffer if the other party could escape liability on the ground that he had no real intention to be bound...”

50. Dresdner Kleinwort v Attrill [2013] 3 AER 607 at paragraphs 86 to 87 is to like effect.

The accounts as evidence of an agreement to make the farm a partnership asset

51. The accounts of a partnership may provide evidence as to whether there was an express agreement to make land a partnership asset. If one partner says there was such an express agreement and the other denies it, the accounts may help the court to decide whose recollection is more reliable. That was the submission of Mr Jourdan who went on to contend that farmers and other business people do not always look carefully at accounts or appreciate what the entries in them mean and mistakes can be made. He then drew my attention to the observations of the editors of The Encyclopaedia of Forms and Precedents Volume 2(1) (Partnership) who stated at 126:

“Practitioners should be wary of relying on the accounts as evidence of the intention of the parties, however, as often such an inclusion is made at the behest of the partnership accountants who include the item solely in order to get tax relief and without addressing the consequent ownership issues, let alone advising the partners to seek legal advice on them. Experience indicates that this is a particular problem with agricultural partnerships.”

52. Accounts, therefore, are no more than evidence and if they do not reflect what was agreed they fall to be disregarded. There are a number of cases where the court has held that the accounting treatment of an asset did not reflect what had been agreed between the partners: see Miles v Clarke [1953] 1 WLR 537, Barton v Morris [1985] 1 WLR 1257 and Powell v Powell (unreported decision of Daniel Gatty sitting as a Deputy Adjudicator to HM Land Registry Ref/2009/1485).

53. Mr Partridge said that of course these cases depend upon their individual facts. That is right, but it does not detract from the fundamental principle that accounts are only evidence and the cases may differ, one from the other, over whether the evidence supported the inference that an agreement was in fact made.

54. Mr Jourdan’s submission, which I have accepted, is that in the present case it is not alleged that there was an express agreement to bring the farm into the partnership stock and also his submission, which I have accepted, was that it is not necessary in this case to imply such an agreement.

55. His further submission is that the entries in the accounts from 1998 to 2003 were therefore prepared on a mistaken basis. The accountants simply carried on the accounting treatment of the farm which had been applied during the old partnership. That mistake was corrected in 2004 and was not repeated in any of the subsequent accounts.

The Partnership Agreement

“This agreement is made the 15 day of December 1997 between (1) Ronald William Ham, of Lower West Barn Farm, Witham Friary, Frome Somerset; (2) Lorna Jean Ham, also Lower West Barn Farm... and (3) John Ronald Ham, also of Lower West Barn Farm, together called ‘the partners’.

It is agreed as follows:

(1) Partnership

1.1 The partners shall carry on business in partnership as farmers under the firm name of “RW and LJ Ham & Son” at Lower West Barn Farm, Witham Friary, Frome aforesaid or of such other places as the partners shall agree.

1.2 The partnership commenced on 1 October 1997 and shall continue until it is terminated as provided in this agreement...

(3) Financial

3.1 The capital of the partnership shall consist of the following items:

(a) Such assets as are specified in a statement of affairs to be prepared by Messrs Hucker & Booker Chartered Accountants, 7A Portway, Wells, Somerset, which assets shall be credited to the partners as therein specified;

(b) Any further sums or assets which any partner may with the consent of the others from time to time contribute for capital purposes which shall be credited to his or her capital account.

3.2 The partners shall keep books of account and such other records as are usual in a business of the same type as the partnership business and such accounts shall, in addition, show the account of each partner in respect of his or her share of the capital and the profits of the partnership.”

56. It is now common ground between the parties that no statement of affairs as envisaged by clause 3.1 of the Partnership Agreement was ever prepared by Hucker & Booker. It was John’s case that this was because the parties dispensed with it in favour of the first set of accounts for the period ended 28 February 1998, which 12-month period comprised the period spanning both the old and the new partnership.

57. I am satisfied that there was no separate statement of affairs, but I do not accept that this was because the first set of accounts was deemed to be substituted for it.

58. By a letter dated 19 May 1998 Mr Pritchard, the accountant at Hucker & Booker, sent to John and his parents copies of the accounts for the year ended 28 February 1998. He also enclosed with that letter election forms to enable the herd to continue to be assessed on the herd basis and also a separate form for an election for the partnership to continue, notwithstanding the change in its composition. Although the herd basis election form was signed by John and his parents, there is no evidence that the partnership continuation election form was ever signed or kept if it had been signed. In fact, because of the changes introduced by the Finance Act 1994 which came into effect before October 1997, such a continuation election was no longer required for this transition from the old partnership to the new one, because Ronald and Jean were partners both of the old partnership and the new one.

59. In any event, even if there had been discussion about the continuation election that would have been in the context of earnings and timed when tax would have been payable. It would not have necessitated a discussion of assets.

60. There is simply no evidence that any discussion took place between the accountants and John and between the accountants and his parents about whether or not the farm became a partnership asset. In many respects the problem is compounded by the fact

that only one set of accounts was created for that 12-month period, which combined both the end of the old partnership and the beginning of the new one.

61. Mr Partridge relied on a passage in Lindley and Banks on Partnership at paragraph 17-02, in which the authors state:

“Once a partner has brought in the asset and been credited with its agreed capital value in the firm’s books, the asset as such will cease to be his property and will thereafter belong to the firm. Equally, that partner’s capital will be unaffected by fluctuations in the value of the asset, which will represent capital profits or losses potentially divisible between the partners in their capital/loss sharing ratios.”

62. However, in my judgment, that passage takes the matter no further because that passage assumes that an asset already is a partnership asset and the discussion centres around the effect of that asset becoming a partnership asset.

63. Indeed, a further passage from Lindley at 17-02 makes the point that accountants often overlook or misunderstand the true meaning of the word ‘capital’. Thus the appearance of the value of an asset in the accounts and in one or more partners’ capital accounts does not necessarily signify an agreement that it is partnership property.

64. Moreover, in so far as potential errors in the accounts are concerned, there have been in this case examples of the partnership accounts containing assets which were not partnership assets. I refer to the inclusion of some shares that were owned by Ronald and Jean personally and the dividend from them, which had been wrongly treated as partnership income until Mrs Scarrott put it right in 2004.

65. I am satisfied that Mr Pritchard merely continued preparing the accounts after the commencement of the new partnership in the same way as he had always prepared them beforehand, but without giving any proper thought to the question whether the farm was or not to be an asset of the new partnership or whether it was merely an asset owned solely by Ronald and Jean which they were going to allow the new partnership to use free of charge.

66. I am fortified in this conclusion because, if Hucker & Booker had thought that there was an agreement to make the farm an asset of the new partnership and so to transfer to John an interest in the farm, they would have been bound to advise on the Capital Gains Tax implications. Given the family connection between the partners and the possibility of a GCT charge based on a deemed disposal of 20 per cent of the farm at market value, the accountants would have been bound to advise that it would be prudent to claim holdover relief. It is apparent that no such advice was given and no claim to holdover relief as made, at least on the evidence put before me. This was confirmed by Mrs Scarrott in her evidence because she told me that had any such claim been made historically, it would have passed down the chain of accountants and have come to her when she sought clearance from the previous accountants, Chalmers HB. On the other hand, if there was no agreement to make the farm an asset of the new partnership Capital Gains Tax would have been completely irrelevant.

67. I consider it likely that Hucker & Booker did not think that there was an agreement to make the farm a partnership asset. I am also satisfied that by mistake they continued to show the farm as an asset of the new partnership. It was a mistake, because I am satisfied that there was no agreement between John and his parents, express or implied, that the farm would become an asset of the new partnership. That mistake was corrected in the 2004 accounts and the correction was then duplicated in the accounts for the ensuing years.

68. The accounts by themselves do not prove the agreement for which John contends.

69. Before the unhappy differences arose between John and his parents, it was no doubt the contemplation of Ronald and Jean that they and John would all carry on together farming at the farm until the death of Ronald and Jean and that John would continue farming after their day. However, although that may have been the contemplation of Ronald and Jean, that is a long way away from an agreement or understanding that the farm became an asset of the new partnership.
70. If I were wrong in concluding that there was objectively viewed no agreement that the farm should become a partnership asset, I must consider whether John knew that his parents never intended to make the farm a partnership asset.

The intentions of Ronald and Jean

71. Under the Partnership Agreement between John and his parents the net profits of the business were to be divided and paid to the partners as follows: Ronald 37.5 per cent, Jean 37.5 per cent and John 25 per cent. By a supplemental agreement made on 1 March 2001 the profit ratio was changed to give John 40 per cent and each of his parents 30 per cent.
72. Ronald and Jean's case is that John was only promised initially 25 per cent of the profits for the business; in other words, he was moving from a salary to a percentage of the profits, although of course he would also earn a stake in those improvements made and assets acquired by his efforts after 1 October 1997.
73. Ronald and Jean point to the fact that when they made their mirror wills on 20 September 2001 -- before any material disagreement between them and John -- they did so on the basis that they were dividing the farmland between John and Catherine, with Catherine receiving 121.92 acres of farmland subject to a right of pre-emption in favour of John. It was the same solicitor who had drafted both the Partnership Agreement and the wills for Mr and Mrs Ham senior.
74. Accordingly, Ronald and Jean argued that their wills showed that they had intended to retain ownership of the farm and, therefore, did not intend to bring it into the partnership. Moreover, of course, the right of pre-emption granted to John in the will must be predicated upon the basis that the person granting the right of pre-emption is the owner of the property in respect of which the right is granted.
75. Ronald's will contained the relevant provisions set out below. Of course, both Ronald and Jean made wills which initially provided that the survivor of the two of them would inherit their spouse's estate, but on the death of the second one:
- “I give to my son John Ronald Ham, subject to any inheritance tax which may be payable thereon: (a) my grandfather clock; (b) the whole of my interest in the United Milk Ltd shares; (c) the whole of my interest in the dairy herd and followers belonging to the farming partnership of RW and LJ Ham & Son; (d) the whole of my interest in the realty which I own at the date of my death, except the block of land referred to in clause 5(e) of this my will, subject to the right of my daughter Catherine to keep the beef cattle on the land for up to six months from the date of my death free of charge.”
76. In clause 5, he gave to Catherine, subject to any inheritance tax which may be payable thereon:
- “(a) my French clock in glass case; (b) my dining table and four chairs; (c) the whole of my interest in my Dairy Crest Ltd shares; (d) the whole of my interest in the beef cattle belonging the farming partnership of RW Ham and LJ Ham & Son; (e) the whole of my interest in the two blocks of agricultural land, formerly part of Lower West Barn Farm, more particularly described in

the following schedule and shown edged in red in the plan which I have signed and dated and place with this my will.”

Then there followed the identification of the 121.92 acres of land referred to.

77. Mr Partridge submitted that those wills were consistent with the realty (that is the farmland) being still regarded by Ronald and Jean as a partnership asset. Of course, he was confronted by the different references to the cattle belonging to the farming partnership and the absence of words referring to partnership and the gift of realty. Mr Partridge argued that the use of the phrase “belonging to the farming partnership of RW and LJ Ham & Son” used in connection with the dairy herd and beef cattle was merely for the purposes of identifying the animals that he was referring to.
78. I disagree. In my judgment, Ronald and Jean in their mirror wills were distinguishing between the disposal of their interest in a partnership asset on the one hand and a gift of their beneficial interest in the farm on the other. The former was qualified by the reference to the partnership name; the latter was not.
79. Mr Partridge also pointed to file notes of a meeting between Ronald and Jean and Mrs Scarrott in June 2004 and Mrs Scarrott’s letter of 7 July 2004 as evidence that Ron and Jean believed that the farm was a partnership asset.
80. I do not accept that submission. Mrs Scarrott was trying to get to grips with the issue of whether the farm was a partnership asset, but the question which she was asking at the meeting, albeit inaccurately recorded by Angela Slade, was whether in the context of potential inheritance tax liabilities Ronald and Jean were happy if John owned 40 per cent as opposed to whether he had been given 40 per cent. By the time of her letter on 7 July 2004, Mrs Scarrott had seen the Partnership Agreement and its reference to the statement of affairs, of which she did not have a copy, and so she presumed that the assets had been transferred into the new partnership. The letter recorded her assumption not any agreement or understanding on the part of Ronald and Jean.
81. I found Mrs Scarrott to be an honest, accurate and reliable witness.

The 2004 Accounts

82. After (1) seeing the new Partnership Agreement and the early accounts relating to it; (2) conducting her own inquiries; (3) noting the absence of any election for holdover relief, which would have been necessary had the farm become an asset of the new partnership in 1997; and (4) clear instructions from Ronald and Jean in September 2004, Margaret Scarrott finally prepared the 2004 accounts on the basis that the farm and the milk quota had been wrongly included as a partnership asset and so removed them from the balance sheet and from the capital accounts of Ronald and Jean. She also added a note in the same accounts that the milk quota was owned solely by Ronald and Jean up to 1 October 1997, but that milk quota acquired thereafter was owned by the three partners.
83. The amendments were to be found in the notes to the financial statements, where £695,808 was removed from tangible fixed assets as a result of a “transfer of non-partnership property”, and on the balance sheet, where the tangible fixed assets were substantially reduced. In the year before, they were shown as £1,075,249.
84. To anyone who read those accounts that discrepancy would have been obvious. Nearly £700,000 of fixed assets was being taken out of the balance sheet. The same figure of £695,808 also featured in the notes dealing with the partners’ capital accounts where the capital account of the Defendants was depleted by £695,808 because of a “transfer of non-partnership property”.
85. Under the heading “Quota” in the notes to the financial statements the following appeared for the first time in the accounts to the year ended 29 February 2004:

“All quota held at 1 October 1997 is owned by RW and LJ Ham jointly and quota purchased since that date is owned by the partnership.”

86. That note in relation to quota appeared in the accounts not only for 2004 but also in every set of accounts produced thereafter up to and including the year ended 28 February 2009. There was no separate reference to the transfer of non-partnership property in the accounts after February 2004 except of the fixed assets and the partnership accounts reflected only £99,443 worth of freehold property which had been acquired in 2000 for £99,222 using partnership money, together with ‘additions’ of £220.
87. Ronald and Jean signed the accounts for the year ended 29 February 2004, but John did not.
88. There is a dispute over whether Ronald and Jean withheld 2004 accounts from John. It was those accounts which most clearly asserted that the farm and milk quota before 1 October 1997 were not assets of the partnership. The accounts for the following years made no reference to the farm, although every year after the reference to the partition of the milk quota was repeated.
89. I find as a fact that John did receive his copy of all the partnership accounts every year, including the accounts for the year ended 29 February 2004, which he had received on or about 18 September 2004 under cover of Mrs Scarrott’s separate letter to him dated the previous day.
90. Specifically I reject the suggestion that Ronald and Jean were concealing his mail or, save in one respect, were in any way denying him full access to the information from the accountants which was placed on the kitchen table for him. I find that John received, opened and kept his own mail.

Concealment, dishonourable conduct and the application to amend

91. Mr Partridge had originally intended in his amended position statement dated November 2015 to allege that the accounts signed by John from 2005 onwards should be rectified to restore the freehold land as an asset of the partnership on the ground that the freehold land was removed from the accounts fraudulently and without the knowledge or approval of John.
92. Objection was taken by Mr Jourdan to the lack of particularity of the allegation of fraud and so on 4 November 2015 Mr Partridge alleged that the freehold land was removed from the accounts “improperly” without informing the Claimant of the intention to remove the freehold land from the accounts or seeking his consent thereto and without the knowledge or approval of the Claimant.
93. Relying on the passage from Lindley dealing with dishonourable conduct, to which I have already referred, Mr Partridge argued that the amended formulation in his position statement, namely reference to “improperly” and the rest of that substituted sentence, was an allegation of dishonourable conduct entitling him to argue for the re-opening of the accounts, but that, if it was not, he should be given permission to amend to allege dishonourable conduct by concealment.
94. Mr Jourdan basing himself upon the Three Rivers case submitted that what must be alleged and proved is conscious impropriety on the part of Ronald and Jean and that simply was not alleged. Impropriety does not allege unequivocally conscious impropriety, argued Mr Jourdan.
95. It was submitted also by Mr Jourdan that John was not alleging bad faith, but was relying on facts which were equally consistent with innocence and therefore it is not now open as a pleading point to John to allege bad faith without an amendment. He opposed such an amendment on the basis it was simply too late and might well have required other information.

96. Mr Partridge submitted that in reality all the facts were now before the court and it was merely a question of which label the court attached to the facts as found.
97. I am satisfied that the amended position statement does not raise the issue of dishonourable conduct or bad faith. Such an allegation is a very serious one, especially made by a son against his parents, one of whom has died and is therefore not able to deal with it.
98. I refuse the application to amend to allege dishonourable conduct. It is too late now to raise this, especially since the matter had been discussed at the time of the amended position statement on the allegation of fraud and the allegation of fraud was deleted. The substitution of the word “improperly” did not put the Defendants on notice that dishonourable conduct was being alleged.
99. In any event, the allegation of such dishonourable conduct was based upon the fact that when Mrs Scarrott sent the accounts to Ronald and Jean she wrote the following which was not present in the separate letter which she wrote to John:
- “Please find enclosed an amended copy of your accounts for the year 29 February 2004. I have amended the accounts to remove the property owned by yourselves before John came into the partnership. I have also amended the note to the accounts to provide details of the milk quota ownership.”
100. In her letter to John, Mrs Scarrott wrote:
- “I would be grateful if you would look through the accounts to ensure that from your knowledge of the business, they are correct. Assuming this to be the case, I would be grateful if you would sign the accounts where indicated on page 3 and return them to me. If you have any queries on the accounts, then please give me a call.”
101. John neither signed the accounts nor gave Mrs Scarrott a call. Ronald and Jean signed their accounts.
102. I am satisfied that the reason for Ronald and Jean’s instruction to Mrs Scarrott not to draw John’s attention expressly in his letter to the changes and corrections in the 2004 accounts was because on Saturday, 7 September 2004 there had been a row at home between John and his father. This arose because of the hours that John had had to work and because Ronald had told him that in their wills he and Jean had left the 120 acres of land to Catherine, with the balance only of the farm to John. The position was aggravated by the fact that in 2003 John had met his girlfriend (and since wife) Lola, who subsequently in 2005 moved in to live with them all in the farmhouse. However, Lola was not from a farming background and John had the distinct view that his parents had not taken to her. All this was in the mix at the time of the row.
103. As a result of the row on 7 September 2004, Ronald and Jean told Mrs Scarrott, at a meeting on 13 September 2004, that they were now terrified that John would walk away with 40 per cent of the farm.
104. In order not to inflame the situation, Ronald and Jean had asked Mrs Scarrott not to draw expressly to John’s attention the removal of the farm from the partnership accounts. Mr Partridge on behalf of John contended that it was this terror which caused Ronald and Jean to change their mind and to change the agreement which had hitherto obtained and, in breach of that agreement, to remove the farm and the quota from the partnership accounts.
105. I am satisfied that John received, opened and read that letter from Mrs Scarrott to him and that he read the accounts contained in that letter. He did not like what he saw and

that is why he did not sign the accounts. Nevertheless, I am satisfied that he knew that the land and milk quota had been taken out of the partnership accounts because it was clear from those accounts themselves.

106. Accordingly, I am satisfied that, although the covering letter did not draw expressly to his attention the changes which had been made, that made no difference because they were obvious to him from the accounts themselves, which I am satisfied he read and which showed the fixed assets going down by £700,000.
107. In his evidence to me, John said that he never had any reason to doubt his parents and so he just signed the accounts where and when they told him to do so. However, if, as he told me, his parents had told him on many occasions that the farm would be one day his entirely, he did have reason to distrust them because he knew from that row with his father on 7 September 2004 that their wills contained the provision that I have referred to and that he was not going to get everything in the farm. This would, I am satisfied, have been an additional reason for him to read with greater closeness those accounts because if only in his own mind he did have reason to distrust his parents because of the terms of the will of which he was now aware.
108. The accounts for the years ended 28 February 2005 to 28 February 2008 were signed by John, Ronald and Jean.
109. John's case was that his signature on those accounts was meaningless, because he had not been given all the information about the changes which the accountants had made and about the different treatment which the farming milk quota had received in the 2004 accounts. I reject that evidence.
110. For the reasons I have already given I reject John's evidence on that issue. Like his father, John has a strong personality, no doubt with a tendency to stubbornness. I reject the suggestion that accountancy material and correspondence was being kept from him and that he was only shown the signature page on the accounts for 2005 onwards, which he merely signed without scrutinising the accounts or asking to see them.
111. John is (or was) a hard-working and ambitious farmer who wanted to move the farm forwards. Unfortunately, some of the rows were because of the different attitudes which John and Ronald had about running the farm. I do not doubt that John worked very hard for very long hours and no doubt he felt that he was confronted by an immovable object in the form of his father.
112. Nevertheless, John always fought his corner. I reject the notion that he would have tolerated anyone only just showing him the signature page for signing by him on the accounts and on his tax returns.
113. Nor do I accept John's evidence that it was only in the first few years of the partnership that he studied the accounts. He told me that thereafter he only just skimmed the accounts until the time came when his mother was only allowing him or presenting him with the signature page for signing. The implication of his evidence was that his parents were progressively starving him of information which would have revealed the amendment to the accounts.
114. Whilst I can understand that the accounts are interesting for a young man newly admitted to the family partnership, I see no reason why they should cease to be as interesting to someone who believed he really was improving the fortunes of the partnership by his own hard work. The effect of John's evidence, if correct, was that he only studied the accounts which showed the farm as a partnership asset, but he did not study the accounts once the farm had been removed.
115. The case of Ronald and Jean was that the accounts from 2004 onwards corrected an earlier error and although John did not like it he knew both that it was never intended

that the farm should become a partnership asset of a new partnership and that the accounts from 2004 onwards had corrected the earlier mistake. I agree. That mistake had been caused by the former accountants erroneously rolling forward into the new partnership accounts the freehold property and the milk quota; previously fixed assets of the former partnership standing in the sole name of Ronald and Jean.

116. I am satisfied that all the material facts had been disclosed to John and that there had been no dishonourable conduct had the matter been one which I had to decide.

Assessment of Witnesses

117. I heard oral evidence from John Ham, Jean Ham, Margaret Scarrott, the accountant, and Jeremy Bell, the parties' land agent.
118. Mrs Scarrott and Mr Bell were witnesses of transparent honesty, integrity, reliability and accuracy whose evidence I unhesitatingly accept. Both of them gave evidence of conversations which they had with John which were predicated on the basis that John believed that the farm was not a partnership asset.
119. John Ham is a man with a great capacity for hard work. I consider that he believed that only he should have any part of the farm, even to the exclusion of Catherine. However, he has become so embittered at what he regards as his unjust treatment by his parents that he has convinced himself that they contrived to do him down.
120. Specifically, his evidence about not knowing of the contents of his parents' will until much later than the contemporary evidence shows he did -- that evidence shows it was disclosed to him in September 2004 and September 2005 -- undermines his evidence and reliability as a witness. Moreover, the inconsistency between his assertion that he believed the farm was a partnership asset from the start and his conduct also undermines my confidence in him as a witness. I found his evidence of his declining interest in the accounts as the years progressed to be particularly unconvincing.
121. I shall briefly summarise some of the aspects of John's actions and omissions which are inconsistent with his assertion that he always believed the farm was an asset of the new partnership: (1) His apparent acceptance in conversations, in the presence of his parents and Mrs Scarrott, that the farmland on which a bungalow for him was to be built was farmland belonging to Ronald and Jean. (2) His discussions with Mrs Scarrott on 27 January 2009, as recorded by her in her attendance note dated 2 February 2009, which incidentally also demonstrated his ability to put his own point across when he needed to do so. (3) The conversation which he had with Mr Bell, which was predicated upon the basis that the farm was owned by Ronald and Jean. (4) Even though he knew in 2009 at the latest from his first solicitor that the farm had been taken out of the partnership assets, something which he also learnt in 2011 from his current solicitors, he did not raise the issue that the farm had been wrongly removed from the partnership account timeously. (5) His apparent acceptance in his pleadings that the farmland was not a partnership asset until a re-amended pleading in January 2013. (6) The clear references in paragraphs 16 and 61 of his first witness statement dated 11 September 2012, which suggested that he accepted that the farm was owned by his parents and his somewhat unconvincing attempt to depart from this in paragraphs 4, 5, 6, 9 and 18 in his second witness statement dated 25 January 2013.
122. At best, John assumed, because it was what he wanted, that what was in the accounts was drawn into the partnership, but there never was any agreement, express or implied, to that effect.
123. Jean Ham is, I believe, 71 years of age. She obviously had difficulty in recollecting the events in relation to whether she told Mrs Scarrott in John's presence that the farm was

not a new partnership asset. She did tell Mrs Scarrott that, but only at a later meeting in September 2004 at which John was not present.

124. Mr Partridge drew my attention to her evidence that the assets were being valued on a market value basis only in case such a basis should be required, although she believed that they were to be truly valued on a historic basis. There is force in Mr Partridge's submission that that evidence given by her was wrong, because the contemporary evidence showed that people were only talking about market valuation at the time.
125. However, I do not regard that as anything other than confusion over the sequencing of events. I reject it, if it be advanced as such, as an example of her consciously misleading the court.
126. Jean Ham is a shrewd and tenacious woman who is plainly aggrieved at what she regards as bad conduct by her son. However, I reject the suggestion that she and her husband fundamentally changed their minds over whether the farm was an asset of the new partnership, because of being terrified that John would walk out and take 40 per cent of it with him. I also accept her evidence that all the correspondence and accounts were on the kitchen table for John to see and that he retained his own mail, unopened by her.
127. On essential matters I prefer her evidence to that of John, but I acknowledge that she is not so accurate or reliable on peripheral matters.

Conclusion

128. For all these reasons, I conclude that the farm and milk quota were not assets of the new partnership and that John always knew that.