

Lloyd Dorian Williams v Gerwyn Lloyd Williams, Susan Elizabeth Ham, Sara Llewellyn Jones, John Alun Lloyd (as executors and administrators of Lloyd Williams deceased)



Positive/Neutral Judicial Consideration

Court

Chancery Division

Judgment Date

4 July 2022

Case No: PT-2021-CDF-000008

High Court of Justice Business and Property Courts in Wales Property Trust and Probate List (ChD)

[2022] EWHC 1717 (Ch), 2022 WL 02440425

Before: His Honour Judge Jarman QC Sitting as a judge of the High Court

Date: 4 July 2022

Hearing dates: 13 to 16 June 2022

Representation

Mr Guy Adams (instructed by Redkite LLP) for the claimant.

Mr James Pearce-Smith (instructed by Michelmores LLP) for the first and second defendants.

The third defendants did not appear.

Judgment

HHJ Jarman QC:

Introduction

1. Lloyd and Catherine Williams farmed at Cefn Coed, Neath, comprising some 144 acres, and adjoining accommodation land at Crythan, comprising about 50 acres, as one holding. Three of their four children are parties to this action, and are in dispute as to the ownership of the farms and the business carried on there since 1985 in the name of L Williams & Son (the partnership). I shall refer to the parents as Mr and Mrs Williams, and to their children by their given names, for ease of reference and with respect. The holding has been farmed primarily to breed beef cattle, and to grow grass, oats and vegetables.

2. Mrs Williams died on 31 October 2013 and left her estate to her husband. Mr Williams died on 6 June 2018 aged 97. The third defendants are the professional executors and administrators of his estate, which because of this dispute, has not yet been fully administered. They have filed a defence, saying that they will remain neutral in this action, but also that they would leave it to the other defendants to advance arguments in defence of the claim.

3. By his last will dated 1 October 2014, Mr Williams gave his son Dorian a choice. To obtain any interest under the will, Dorian had to do four things: to vest a new house he was building at Cefn Coed in his sole name, and the old farmhouse there in the joint names of Gerwyn and Susan. He also had to vest his interest in the remainder of Cefn Coed and in the partnership in himself and Gerwyn as tenants in common, and to take Gerwyn into partnership with him on the terms in a draft deed attached to the will.

4. Dorian has done none of those things, and so, subject to the executors discretion to extend time for these to be done, the default provisions of the will take effect. Mr Williams' interest in the two farmhouses at Cefn Coed are left to Gerwyn and Susan in equal shares. His interests in the remainder of Cefn Coed and in the partnership were left to Gerwyn. Since 1991, Crythan has been vested in the name of Susan, although it has continued to be farmed together with Cefn Coed.

5. Dorian claims that both Cefn Coed and Crythan are assets of the partnership which carried on the farming business there under a deed of partnership dated 1 April 1985 (the 1985 deed) between himself and his parents, and that as a result of their respective deaths, these assets now vest in him. Alternatively, he claims them on the basis of promises he says his parents made to him at the time that the farms were purchased and subsequently, that they and the business would belong to him after his parents' days. Each of these claims are denied by Gerwyn and Susan, but if these assets do vest in Dorian, Gerwyn counterclaims for an interest on the basis of promises he says his parents made to him.

6. Each of these three gave evidence, as did their elder sister Rhian. Unlike her siblings, she married at a young age and left the farm to set up her own home nearby, and although she remained close to the family, she did not thereafter carry out work on the farm.

7. The impression I gained from all of them was that Mr and Mrs Williams and their four children were close as a family and were all hardworking. In the main I did not get the impression that any of them came to court to give misleading evidence. There was not a great deal of factual dispute between them, apart from the mains issues, which were as to what work Dorian and Gerwyn carried out on the farms and what their parents said to each of them. Various inconsistencies were put in cross-examination, particularly to Dorian and Gerwyn, but in my judgment most of these were no more than to be expected, given that witnesses were trying to recall events over the last 40 years or more. I shall deal only with those which I consider to have a probative value.

8. Each side called other witnesses to support their case, but in the main these did not take matters very much further. Again, I shall deal with these only to the extent that they assist in the determination of the issues before me.

9. There is some contemporaneous documentation, but some has been lost, for example the purchase files in relation to the farms. The family and its individual members used the same firm of solicitors, T. Llewellyn Jones, and usually dealt with one of the partners, Sara Llewellyn Jones, who is also one of the administrators of the estate of Mr Williams. Accounts were prepared for the partnership, by an accountant, Kerry Tanner.

10. Before dealing with each of the issues, I shall set out the background to the dispute, which is largely uncontroversial. Where it is convenient to deal with controversial issues as part of the background, I shall do so.

Background

11. The children of Mr and Mrs Williams were born in the late 1950s and early 1960s over a period of six or seven years, in the order of Rhian, Gerwyn, Dorian, and Susan. They all left school in the 1970s and remained living and working on the farms for some years, except for Rhian, who as indicated left a little later to get married. Susan married much later. Gerwyn has not married and has no children. Dorian, has not married, but he has three children out of two relationships.

12. Mr Williams was originally a tenant of Cefn Coed. He attempted to purchase it in the late 1970s, but to his disappointment was outbid. In the early 1980s, the rent was increased from £100 each year to £1500, and a schedule of dilapidations was served and had to be attended to. Gerwyn was paid about £20 per month for working on the farm, but in about 1982, he took up a job subcontracting with a motorway construction company to earn more money. He carried on living at Cefn Coed and working on the farm at evenings and weekends, without pay. Dorian continued to work full time on the farm, and was then also paid about £20 per month, although this increased over the years.

13. Mrs Williams wrote up a cash book showing receipts and outgoings in respect of the farms. In 1984 Gerwyn paid his parents £5560, which was used to carry out drainage work on the farms to top up a grant which was paid. This sum was described in the cash book as a loan, but it has not been repaid.

14. Mr and Mrs Williams purchased Crythan as beneficial joint tenants on 25 May 1985 for £45,500. Mr Williams was then in his mid-sixties, and his wife was some 10 years his junior. The conveyance, drawn up by T. Llewellyn Jones, contains an express declaration that the land is conveyed to them to hold as beneficial joint tenants. Dorian in his evidence said that he was told by his mother at the time that it was done in this way to make it easier. However, it is not clear what was to be made easier for whom, and this vague phrase takes the matter no further.

15. Mr and Mrs Williams used their savings of £40,739 to make the purchase, but also asked their children to help with the shortfall. Rhian contributed £1,427, Dorian contributed £1000, and Susan contributed £900. Dorian also claims to have contributed a further £3,500, but cannot now find the bank statements to show this. He says he paid this from his savings. However, this was not referred to in his solicitors letter in March 2017 setting out his claims, and was not referred to until his particulars of claim was filed in February 2021. Given, the small amount of money he was being paid, in my judgment it is unlikely that he would have saved up this amount, and I am not satisfied that his recollection about this is accurate. It is accepted that he paid £1,000.

16. Dorian also asserts that the shortfall was made up of partnership monies. For the period April to June 1985, the cash book shows that sums of £4,550 and s£3582.34 were paid to T. Llewellyn Jones. It is likely that some of this was paid for costs and disbursements, but it is not clear just how much was so paid nor to what extent this could have been covered by drawings which Mr and Mrs Williams were entitled to make.

17. The 1985 deed is dated shortly before Crythan was purchased. It was witnessed by Susan. The recitals record that Mr Williams was farming on his own account, and that the capital shown in his accounts was his capital. It then records that the goods and chattels of the old business had been delivered to the three new partners "as part of the assets" of the new partnership. It contains a clause deeming that the partnership began on 1 April 1985. It provides that each partner had a third share of profits and losses. The partnership would continue in the event of the death or bankruptcy of a partner, and the leaving partner would have a fair value for their share. There was no provision for partners to retire. It also provides for partnership accounts to be prepared and that such accounts when signed would be "conclusive and final" as between the partners of the matters contained therein.

18. Dorian cannot recall when he signed it, but accepted in cross-examination that this may have been at a later time than the date it bears. He said his parents organised this, and that he obtained no advice about it. The income he received did not change when the deed was entered into.

19. Mr Pearce-Smith for Gerwyn and Susan contends that it is likely that the 1985 deed was signed after Crythan was purchased. It is a professionally drawn document which states that it is dated 1 April 1985 and provides that the partnership is deemed to have commenced on that date. No other date appears on the deed. In my judgment in the absence of clear evidence to show that it was signed on a date later than the purchase of Crythan, it is likely that it was signed beforehand.

20. On 3 March 1986, Cefn Coed was purchased in the joint names of Dorian and his parents, with an advance of £40,000 by way of mortgage from the Agricultural Mortgage Corporation Plc repayable over a 40 year term. The transfer contained no declaration as to how the beneficial interest was to be held. However, on 1 April 1986 a restriction was registered on the registered title to say that no disposition by one proprietor by which capital monies arise was to be registered without an order of the registrar or of the court. It is not in dispute that because of the ages of his parents, it would have been difficult for them to obtain the mortgage by themselves, and Dorian was included because he was younger and thus acceptable to the lender. One of the conditions of the mortgage required a deed of surrender in respect of the tenancy, and this was provided and signed by Mr and Mrs Williams and Dorian.

21. In the same year, Gerwyn and his father purchased plots of land near the farms at a place called Eaglesbush. The purchase price was provided by Gerwyn. Subsidies payable in respect of this land were paid into the partnership.

22. The first set out of accounts for the partnership was prepared by Kerry Tanner to the end of March 1986. The two farms were shown in the accounts as partnership assets. It is not claimed that there was express agreement between the partners about this. These, and subsequent, accounts contained no place for the partners to sign, and Dorian confirmed that he did not sign them. He also confirmed that he did not receive the amounts shown in the accounts as his drawings.

23. In a written statement admitted under the [Civil Evidence Act 1995](#), Kerry Tanner says he did not receive any specific instructions and does not recall having any conversations relating to the inclusion of the two farms on the partnership accounts prior to 2013. He included them, he says, to "enhance the balance sheet value of the partnership" so as to make it easier for the partners to apply for borrowing "in the future, if they ever needed to." Mr Adams, for Dorian, submits that this could refer to the borrowing for Cefn Coed, but in my judgment

that is unlikely, given the reference by Kerry Tanner to future borrowing if ever needed. I accept his evidence in this regard.

24. In October 2014, Mr Williams made a written declaration saying that he recalled that during the 1980s "we did mention to Dorian that he would inherit the farm" if Gerwyn was running the contracting business. I must be careful about placing too much weight on untested statements from Mr Williams, but Mr Adams relies on this as an admission. The evidence suggests that despite his age, Mr Williams remained physically and mentally well until his diagnosis in 2017.

25. Moreover, some support for this is given by a witness called to give evidence by Dorian, namely David Davies. He said that in March 1988 he heard his father and Mr Williams talking and the latter said he was going to leave Cefn Coed to Dorian. When his father said that Mr Williams had two sons, the latter replied that Dorian was the farmer and the other one was on motorways. In my judgment it is likely that Mr Williams did mention this to Dorian as he recalls, but when Gerwyn was working on motorways. In my judgment, it is likely that the recollection of what Mr Williams said to Dorian at the time about inheritance was accurate.

26. In 1987, Mr and Mr Williams sold two fields at Crythan for £15,000 and used the money to reduce the AMC borrowing to £25,000. The following year the mortgage was converted to an interest only one, supported by an endowment policy.

27. At about the same time Gerwyn finished motorway work, and so had more time to work on the farm. Susan also carried out some work on the farm. She also accompanied her father on a weekly round, selling the vegetables produced. Initially the proceeds, which were at this time in the order of £40 per week, were given to her father. A couple of years later, after her father had a period of illness, she took on the round by herself, and gave the proceeds to Dorian. The monies were used for the weekly food shop for the family. Mrs Williams and Susan also cooked cleaned and washed for the men.

28. The farmhouse at Cefn Coed was by then in a bad state of repair. In 1988 Gerwyn and Dorian, with the help of others, spent time refurbishing it, without pay.

29. In the same year, Mr and Mrs Williams made mutual wills dated 10 August 1988, drawn up by T. Llewellyn Jones. Each left their estate to the other, providing the other survived for 28 days. If that did not happen, each left their share in the partnership and in Crythan to Gerwyn, their share in Cefn Coed to Dorian, and the residue to Susan.

30. In 1991 Gerwyn ceased living at the farm and moved to a nearby property to live. He started doing grant refurbishment work on local authority dwellings with another man by the name of Andrew Jones, but it was not always full time. He continued to carry out some work on the farms in his spare time. At about this time a bailer was purchased and both Dorian and Gerwyn used this to carry out contracting work on other farms during harvest.

31. In the same year, Crythan was transferred into Susan's name. Mr and Mrs Williams and their sons, in various ways, were involved in litigation with neighbouring farmers, and related litigation, and were granted legal aid

certificates. It appears to be accepted that at this time the transfer was intended to be temporary for the purposes of a legal aid application. However, Dorian was not consulted about this transfer. This was an improper purpose and reflects badly on everyone involved. However, it has not been transferred back, and the relief sought by the parties does not depend on such improper purpose.

32. In the mid-1990s, a new shed was built at Cefn Coed. Gerwyn and Andrew Jones carried out the blockwork and sheeting and put slabs at the front of the shed.

33. In 1997 a digger was purchased for some £32,000, of which £12,000 was paid by Gerwyn. Again, this was shown in the cash book as a loan, but again has not been repaid. Gerwyn used this to carry out contracting work on behalf of the partnership, the income from which was paid into the partnership account. In the following few years, more machinery was purchased, such as an excavator, and tractor. Payment for the use of these machines continued to be paid into the partnership until 2003, when Gerwyn started a plant hire business and paid the income from that business into his own account. He continued to work on the farms.

34. In 1998, Gerwyn obtained planning permission to convert a barn on Crythan, which was not being used for farming, into a dwelling house, and proceeded to carry out the conversion. Dorian was aware of this and raised no objection. Gerwyn lived there from 2003 to 2017, when he moved back to Cefn Coed.

35. In that year Mr and Mrs Williams each made a new will, this time handwritten, simply leaving their estates to the other.

36. From about 2000, Susan started taking on the task of dealing with paperwork in connection with the farms from her mother, whose health was deteriorating. By 2007 she was unable to walk and had daily care visits. Susan had by now married and had moved to live close to the farm. She helped with her mother's care. From about this time, mail for her parents and the partnership was delivered to Susan's house, because of difficulties with postal deliveries along the long drive to Cefn Coed. She operated a bank account in the names of herself and her father into which his pension was paid.

37. Dorian accepts that in 2003 his father told him that he wanted to leave one quarter of the partnership to Gerwyn, but didn't mention this again.

38. Kerry Tanner says in his statement that Mrs Williams resigned from the partnership in 2005, but there is no paperwork to confirm this. When he was later, in 2010, asked to confirm this he did not respond.

39. The plant hire business finished in about 2010. Since then Gerwyn has worked on the farms. In that year, Susan consulted Sara Llewellyn Jones about transferring Crythan into the joint names of herself and Gerwyn, but this was not put into action.

40. On 30 August 2012, when Mr Williams was 91, he and Gerwyn attended a meeting with Sara Llewellyn Jones accompanied by Gerwyn. He told her, as recorded in her attendance note, that to be fair to his children, he wanted to give a half share in the partnership and a third of Cefn Coed to Gerwyn, and, if his wife predeceased

him, a third share to Susan. The notes suggests that he believed that Gerwyn had to have a share in the partnership to avoid a problem with agricultural relief. He said that Gerwyn had spent £100,000 on the farmhouse and had done the bulk of the work on the farms. He said that no documents were to be sent to Cefn Coed. In my judgment that is likely to be because all post to that address was going to Susan's house.

41. On 29 November 2012, Mr Williams executed a new will at a meeting with Susan and Sara Llewellyn Jones. By this will he gave his one half share in the partnership and his one third interest in Cefn Coed to Gerwyn. He also provided that if his wife predeceased him and left him her third share in Cefn Coed, the new house which Dorian was in the course of constructing on Cefn Coed would be left to him, one third of the farmhouse would be left to Susan, and one third of Cefn Coed would be left to Gerwyn and Dorian. He expressed the wish to be fair between these three of his children and that his sons should agree certain matters including that they should farm as equal partners.

42. In 2013 Mrs Williams passed away. In the last year of her life she did not have mental capacity. In June of that year the endowment policy matured and Dorian, without consulting his father, used the proceeds to put up a new shed and wanted to extend the loan by 5 years. His father was angry at this because he wanted to use the proceeds to pay off the loan, and used £6,000 of his own money to do so.

43. This led Gerwyn and Susan to consider the basis on which the farms were held. There were conversations with Sara Llewellyn Jones and Kerry Tanner, and the former drafted a new partnership deed in which Gerwyn was to be a partner and expressly stating that Cefn Coed was not an asset of the partnership. The latter adjusted the balance sheet of the partnership accounts as at end of March 2013 to remove Crythan as a partnership asset. In September that year, Sara Llewellyn Jones wrote to Dorian enclosing a copy of the deed and inviting him to sign it.

44. In cross-examination, he said that his father came into the kitchen with the draft deed, said that Gerwyn had been added, and asked him to sign. Dorian replied no, and that he did not agree. His father said he would change his will in favour of Susan, but that he had stood his ground and that there were "a few words." The draft deed was put into the filing cabinet. That part of his evidence came across as vivid and genuine and I accept it.

45. From later attendance notes of Sara Llewelyn Jones, it appears that everyone anticipated that he would refuse. She also discovered the restriction on the registered title to Cefn Coed, and in her written statement says that she established that this had been applied by HM Land Registry. Mr Williams served a notice dated 3 March 2014 to sever any joint tenancy in case one existed.

46. It was put to Gerwyn and Susan in cross-examination that all of this was their doing to further their own interests. Each of them denied this and said that they were acting on the instructions of their father. It is common ground that he was a strong willed individual. This part of their evidence came across as vivid and genuine and I accept it.

47. In 2014, Dorian and Gerwyn tendered to buy agricultural land for £47,000. Gerwyn was going to contribute £20,000 and the remainder was going to come from the partnership account. This did not proceed, but Dorian was asked in cross-examination whether the intention was to farm this land as part of the partnership. His reply was that as the land was tenanted, they could not have access unless the tenant was removed. In the same year

Gerwyn paid £13,000 to the partnership to buy more cattle, and again that was described in the cash book as a loan, but has not been repaid.

48. Dorian accepts that in 2015 he signed forms in respect of rural farm payments saying that Gerwyn was a new partner in the farming business and declaring the information to be true. In cross examination he said that he did so reluctantly, because he knew Kerry Tanner was proceeding on this basis, although without his consent. As the rules regarding such payments are strict, he did not want to incur penalties. He also accepts that he signed tax returns with copy accounts showing his brother as a partner. He said these returns were not very clear and he signed them without noticing this reference. In my judgment his evidence on these forms does him no credit.

49. In 2017 Dorian instructed solicitors who wrote to Sara Llewellyn Jones in March setting out his version of the history of the farms and the farming and raising for the first time the issue of proprietary estoppel. The letter distinguished between the ownership of Cefn Coed and the partnership. The letter stated that he was content that Gerwyn should obtain a 25% interest in the farming business. In cross-examination he denied that he was so content and said that his solicitors had got that wrong. However, it is clear from the letter that his solicitors had taken detailed instructions from him and in my judgment it is more likely that it accurately recorded his state of mind at the time.

50. In May of that year, Mr Williams' GP diagnosed the slow onset of Alzheimer's disease, but assessed him as then having sufficient capacity to understand his estate and to decide upon its distribution.

The main issues of fact

51. I will now deal in more detail with the two main issues of fact, namely the extent to which Dorian and Gerwyn worked on the farms, and what promises were made to each of them by their parents in respect of the farms.

52. Apart from the work identified above, Dorian accepts that Gerwyn undertook drainage work and looked after the farm machinery in recent years, helped at busy times such as harvest, and carried out what he described as routine work. To his credit he accepts that his brother is hardworking, but denied that he spent most of his spare time working on the farms, as Gerwyn asserts. He called other witnesses who also helped on the farms. He also called his former partners, Paula Griffiths and Angela Gower, with whom he stayed sometimes. Each said that Dorian used to come late and leave very early and would spend his time on the farms.

53. Gerwyn on the other hand says he often spent more time on working on the farm than his brother, who would often spend time at the homes of his successive partners and spend time with his children, including taking them to and from school. Susan said that Gerwyn did as much work as anyone. Andrew Jones did building jobs on the farms and said that Dorian was not the main farmer and that he and Gerwyn farmed together. Gerwyn also called another witness who worked on the farms, Robert Jenkins, who said that Gerwyn always worked on the farms and particularly liked the machinery side of it.

54. The witnesses who attended the farms occasionally can of course give only snapshots of the work carried out there. During a period of over 40 years, it is likely that there would be occasions when one or other of the brothers would be carrying out more work than the other. For example, in the winter time there was likely to be more work with the stock, and in the summer time more work with machinery in the hay and vegetable harvest.

In my judgment it is likely that in this respect they complemented one another in that Dorian tended to be the stockman and Gerwyn tended to be the mechanic and machine operator. It is not surprising that in this bitter litigation each should now perceive that he carried out more work than the other. It is perhaps unnecessary to make a finding overall as to who did, particularly when it is not easy to compare the work which each focussed on. In my judgment it is sufficient to find, as I do, that each over a 40 year period made a very substantial contribution to the work on the farms.

55. As to promises, I have already found what Mr Williams said to Dorian in the 1980s. In my judgment this was in the context that Gerwyn was then working on the motorways and that Mr Williams was contemplating what would happen if that continued for any length of time. In the event that lasted for only 5 years or so, when I am satisfied that Gerwyn continued to work on the farms in the evenings and on weekends, as he did with his subsequent business activities.

56. Dorian, in his witness statements, goes further and says that his mother and father always "drummed into him" that he was paying for the farms and they and the business would be his after his days. He also says that his father told other people this from time to time. Angela Gower said that in 1999 when she was carrying Dorian's child and was at the farm, Mrs Williams told her that he would be getting everything.

57. On the other hand, Gerwyn says that his parents promised him an interest. He was aware of the partnership, but didn't know that this would mean that the farms would go to Dorian. This is given some support from his sisters. Susan in cross-examination said that from a young age, she understood and it was known in the family that the farm would go to "the boys," as she put it. There is a dwelling in Neath which had been owned by their grandparents, which she and her sister were intended to share. This is now in the name of herself and Gerwyn because a mortgage was arranged to renovate the property. Susan accepted in cross-examination that she intends to give this to her sister once the mortgage is paid off, as that would be fair, given that Crythan remains in her name.

58. Rhian said that her parents wanted to be fair to all of the children, and their father did not want Gerwyn "cut out," as she put it. Dorian accepted in cross-examination the possibility that his father wanted to be fair to his children.

59. In my judgment it is likely that Mr and Mrs Williams wanted to be fair to their children as Rhian says, and this is most clearly demonstrated in their testamentary dispositions. In my judgment it is unlikely that Mr and Mrs Williams continued to make the promises relied upon by Dorian, when they had made provision in their 1988 for the farms and the partnership to be shared between their three children who remained working on the farm. It is more likely that the 1988 wills were made in the context that Gerwyn had finished working on the motorways, but had also continued to work on the farms in the evenings and on weekends.

60. I am not satisfied that the continued promises relied upon by Dorian were made as he now recalls them. It is more likely that that is a mistaken recollection, based on what he was told by his father in the circumstances which existed when Gerwyn was working on the motorways. I am not satisfied that Angela Gower's recollection of just one mention, made some 30 year ago, is accurate. I accept the evidence of Gerwyn, Susan and Rhian in this regard.

The law relating to partnership assets

61. I now turn to the law relating to whether property is held as an asset of a partnership. Mr Adams took a preliminary point that if Gerwyn is not a partner, then he has no standing to deal with these points, because the estate is not administered. However, he is a defendant and takes the point in his defence, whilst the administrators, although wishing to remain neutral, have also stated that they will leave it to the other defendants to take points in defence, and in my judgment he has sufficient standing.

62. There was no dispute before me as to the principles to be applied.

63. [Section 20 of The Partnership Act 1890 \(the 1890 Act\)](#) provides as follows.:

"(1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in [this Act](#) 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.

(2) Provided that the legal estate or interest in any land .. which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust, so far as necessary, for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land .. not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase."

64. Section 21 provides that unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm. Whether a particular asset is brought into partnership stock is not something which those provisions otherwise engage with.

65. Whether an asset is partnership property depends upon the intention of the partners, and is thus a question of fact. In Lindley & Banks on Partnership, 20th Edition, paragraph 18.03, the position is summarised thus:

"...it is up to the partners to agree between themselves what assets are to be treated as partnership property. In the absence of an express agreement, the relevant factors will generally be: (1) the circumstances of the acquisition, with particular reference to the source from which it was financed, (2) the purpose of the acquisition, and (3) the manner in which the asset has subsequently been dealt with."

66. In *Ham v Bell* [2016] EWHC 1791 (Ch) HHJ McCahill QC, sitting as a judge of the High Court, reviewed some of the authorities on this issue.

67. In *Miles v Clarke* [1953] 1 WLR 537, Harman J said at page 540:

"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 than is absolutely necessary to give business efficacy to that which has happened."

68. In *Eardley v Broad* [1970] 215 EG 823, a partner held a tenancy of a farm and then went into partnership. Nield J concluded that the mere fact that the partnership paid the rent under the tenancy did not make the tenancy a partnership asset.

69. 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..."

70. HHJ McCahill QC in *Ham*, at paragraph 46 said;

"...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."

71. As to the evidence of the partnership accounts, he said this at paragraph 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."

72. Accordingly, the inclusion of an asset in the partnership accounts is an indication of such intention, but is not conclusive.

The partnership assets in this case

73. In the present case, there was no express agreement that Crythan, or Cefn Coed when later purchased, would become partnership assets. Accordingly, other indications of the intention of the parties must be considered and weighed. There are indications both ways.

74. Those that support an intention Crythan was to be so held, as Mr Adams submits, are as follows: the 1985 deed was entered into shortly before the purchase of Crythan; it appears that some sums from the partnership account were used to make up the small shortfall in the purchase price; the proceeds of the sale of fields at Crythan were dealt with as partnership property; the partnership farmed Crythan; until 2013 both farms were included in the partnership accounts and the net assets were shown in a joint capital account, and the oral indications which I have found were made to Dorian by his father at this time. Mr Adams also relied on the

1985 deed as suggesting that the accounts were conclusive of matters stated within them, but that only applies where the accounts were signed by the partners, and in this case they were not.

75. The indications that Crythan was not intended to be a partnership asset, as Mr Pearce-Smith submits, are as follows; the purchase price of Crythan was provided as to the vast majority by Mr and Mrs Williams, with a small shortfall made up by contributions from three of their children and possibly from partnership monies; the conveyance provides that it was to be held by Mr and Mrs Williams as beneficial joint tenants; Gerwyn's loan of £5,000 just before the purchase had not been repaid; the transfer to Susan in 1991 without consulting Dorian; the conversion of the barn by Gerwyn without objection from Dorian; Susan contemplating transferring Crythan into the joint names of herself and Gerwyn in 2010, the absence of reference to Crythan in Mr Williams' wills or in the letter from Dorian's solicitors in March 2017; and the fact that in his particulars of claim Dorian pleads that he did not appreciate that Crythan was a partnership asset.

76. In weighing up those indications, in my judgment those that indicate Crythan was not intended to be a partnership asset outweigh those that indicate it was, by some margin. Particularly strong indications, in my judgment, are that the vast majority of the purchase price was provided by Mr and Mrs Williams with contributions from three of their children, that it was conveyed to them as beneficial joint tenants, and that Dorian's case is that he was not aware that it was a partnership asset. The inclusion in the accounts in my judgment is not a strong indication otherwise because of Kerry Tanner's evidence that this was done to assist with future borrowing if needed, and without instructions.

77. In the case of Cefn Coed, Mr Adams points out that that was purchased by the partnership with borrowed monies, and repaid out of partnership monies, and relies upon its inclusion in the accounts. Moreover, counsel's advice was obtained on instructions of Mr Williams, Gerwyn and Susan, which after taking Kerry Tanner's comments suggested Cefn Coed was held as a partnership asset and this was made known to them.

78. The counter indications are: Dorian's involvement was needed to secure the mortgage, the sale proceeds of fields at Crythan (which I have found belonged to Mr and Mrs Williams and not the partnership) was used to reduce the mortgage on Cefn Coed; Mr Williams paid £6,000 of his own money, as well as partnership money, to pay off the mortgage; the wills of Mr and Mrs Williams treated Cefn Coed as owned by them; Dorian in his meeting with Sarah Llewellyn Jones in January 2017 believed that his father owned two thirds of the farm after the death of his mother; and the distinction made in his solicitors letter a couple of months later between the ownership of the farm on the one hand and shares in the partnership on the other.

79. In my judgment the repayment out of partnership monies of the mortgage on Cefn Coed is a strong indication that it was a partnership asset. On the other hand about half the advance was paid by Mr and Mrs Williams, from sale of Crythan fields and by way final payment. The treatment in the accounts is not a strong indication, for the reasons already given. A particularly strong indication that it was not intended to be a partnership asset, in my judgment, appears from the wills of Mr and Mrs Williams, only some two years after the purchase, which in the event that the one did not survive the other for 28 days, gave their share in the partnership to Gerwyn but their share in Cefn Coed to Dorian. Weighing up all these indications, in my judgment those showing that it was not intended to be a partnership asset outweigh those that show it was.

80. Accordingly neither farm was in my judgment an asset of the partnership.

Who were the partners?

81. That leaves the question of whether there was a change in the partners after the 1985 deed. The evidence that Mrs Williams ceased to be a partner before her death is thin. Later accounts show profits going only to Mr Williams and Dorian. Mr Williams indicated in 2003 that he wanted Gerwyn to have a share in the partnership and in his 2012 will gave him a half share. However, there are no other documents to support Kerry Tanner's evidence on this point, and no evidence that she was paid for her share. I am not satisfied that the evidence is sufficient to establish that she did retire.

82. Gerwyn says he became a partner in 2013. He does not rely upon an express agreement, but says that this can be inferred from the work that he carried out, and his expenditure for the partnership, which he has set out in a schedule, as well as the payment of £13,000, albeit described as a loan. A partnership can be inferred from conduct and the court must look at the true nature of the parties' relationship (see *Dutia v Geldof* [2016] EWHC 547 (Ch) and *Patel v Barlows Solicitors (a firm)* [2020] EWHC 2753 (Ch)).

83. On the other hand, there was the very strong opposition by Dorian to signing the new deed, which it appears everyone expected. Mr Pearce-Smith submits that refusal to agree new terms does not necessarily mean that there was no agreement to form a new partnership with Gerwyn, which I accept as far as it goes. However, Dorian's evidence about how he refused to sign when asked by his father to add Gerwyn's name, which I have accepted, was particularly strong. That suggests that it was the addition of Gerwyn which Dorian objected to, rather than any other particular term. In my judgment that leaves insufficient evidence from which to infer a new partnership.

84. Those findings have the following consequences in law following the deaths of Mr and Mrs Williams. Crythan remains vested in Susan. In the absence of any declaration of the beneficial interests of Cefn Coed, the purchase of it for business purposes and Mr and Mrs Williams' treatment of their shares as separate suggests a tenancy in common. In any event, subject to Dorian's proprietary estoppel claim, the notice of severance was in my judgment effective to sever any joint tenancy. On Mr Williams' death, his share and that which he inherited from his wife, formed part of his estate and pass under his last will to Gerwyn and Susan.

85. As for the partnership, after the death of Mrs Williams, the surviving partners were her husband and son, Dorian. Section 33(1) of the 1980 Act provides that subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death of any partner. Clause 14(a) of the 1985 deed provides for the continuation of the partnership between partners, in the plural. In my judgment that does not apply where there is only one surviving partner, and so the partnership was dissolved. This means, again subject to estoppel, that its assets should be realised, debts should be paid, and after any appropriate accounting, the net assets should be divided between the estate of Mr Williams and Dorian.

The principles relating to proprietary estoppel

86. The next issue is the proprietary estoppel claims. Again there was no dispute as to the applicable principles. They are summarised by Lewison LJ in *Davies v Davies (No.2)* [2016] EWCA Civ 463. So far as material to the present claim, they can be stated as follows.

- i) 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 a promise not to be kept either wholly or in part: *Thorner v Major* [2009] UKHL 18.

- ii) The necessary requirement to raise an estoppel are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: *Thorner v Major* at paragraph 29.
- iii) 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 and 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 v Holt* [2001] Ch 210 at 225 ; *Henry v Henry* [2010] UKPC 3 .
- iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial.
- v) 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 who has given the assurance seeks to go back on it.
- vi) The essence of the doctrine is to do what is necessary to avoid an unconscionable result: *Jennings v Rice* [2002] EWCA Civ 159 .
- vii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at paragraph 65.

The principles applied in this case

87. I have already made findings as to what was said to Dorian when the farms were purchased and the partnership was formed, to the effect that he would inherit the farm if Gerwyn was working on the motorways. In my judgment that was not an assurance that this would happen come what may. It was in the context that Gerwyn was then working on the motorways, albeit as I have found that he was working on the farms in the evenings and at weekends. However, shortly after that was said, he ceased to do so. Although from time to time he pursued other business activities, as I have found over the years he has carried out substantial work for, and contributed money towards, the partnership.

88. In those circumstances, Dorian could not reasonably have relied on that indication throughout the subsequent years to believe that he would inherit the farms. Indeed, by 2003 he was told by his father that a share would be left to Gerwyn. To his credit, he accepted in cross-examination that he had no interest in working elsewhere.

89. Nor is it clear that he has suffered detriment. The farms have provided him with a living for over 40 years. Although the financial rewards were not great, at least initially, he was provided with board and lodge. He has been left with his interest in Cefn Coed and his share of the partnership. Given his father's wish to be fair to all his children, and given the contribution made by Gerwyn and Susan to the farms and business and to the family home, that is not in my judgment an unconscionable result. It is proportionate to the various contributions.

90. Accordingly, Dorian's proprietary estoppel claim is not made out. As a result of that finding, it is unnecessary to consider Gerwyn's claim based on proprietary estoppel.

91. I invite counsel to agree a draft order and consequential matters. Any such matters which cannot be agreed will be determined on the basis of written submissions, which should be filed together with the draft order within 14 days of hand down of the judgment. I am grateful to counsel for their assistance.

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