



Neutral Citation Number: [2024] EWCA Civ 699

Case No: CA-2023-002381

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Mr Justice Zacaroli
[2023] EWHC 2393 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/06/2024

Before:

LORD JUSTICE MOYLAN
LORD JUSTICE NEWY
and
LADY JUSTICE FALK

Between:

(1) RICHARD JOHN WINTER
(2) ADRIAN CHARLES WINTER
- and -
(1) PHILIP HENRY WINTER

**Claimants/
Respondents**

**Defendant/
Appellant**

(2) CLARKE WILLMOTT TRUST CORPORATION
LIMITED

**Defendant/
Respondent**

Alex Troup KC (instructed by Ashfords LLP) for the **Appellant**
Hugh Sims KC and Michael Selway (instructed by Berensens Solicitors) for the **Claimant**
Respondents

The **Second Defendant** did not appear and was not represented.

Hearing date: 5 June 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. The claimants, Richard and Adrian Winter, and the first defendant, Philip Winter, are the sons of Albert and Brenda Winter. In a judgment dated 29 September 2023 (“the Judgment”), Zacaroli J (“the Judge”) found in favour of the claimants on a proprietary estoppel claim which they had made in relation to property comprised in Albert’s estate. Philip now challenges that decision.
2. For convenience, and without any disrespect, I shall refer to the members of the family by their forenames.

The facts

3. This section of this judgment is mainly derived from the Judgment.
4. In 1964 Albert both married Brenda and bought “Bower Farm” in Bridgwater, Somerset. The couple lived in a bungalow on the farm and carried on a market garden business from it.
5. Richard was born in 1966, Philip in 1967 and Adrian in 1968. All three helped on the farm even before they had left school and, once they had done so, worked in the business on a full-time basis.
6. Richard and Adrian both left the business for short periods. In 1984, Richard enlisted with the Parachute Regiment, but he was invalided out during initial training and, abandoning plans to join the Royal Marines instead, returned to work on the farm. In 1996, after a falling out with his father, Adrian went to work at the Royal Ordnance Factory for a few months and then had a number of other jobs, but he too soon resumed work on the farm.
7. Somewhat earlier, in 1988, Bower Farm had been transferred into the joint names of Albert and Brenda. In the same year, a partnership known as Team Green Growers (“the Partnership”) had been established to run the market garden business. Albert, Brenda and their three sons had equal shares in the Partnership.
8. In 2000, Albert and Brenda declared that they held Bower Farm on trust for the Partnership. A year later, Brenda died leaving a will pursuant to which her interest in the Partnership passed to her sons. Richard, Philip and Adrian thus came to have 26.66% shares. Their father retained a 20% share.
9. Albert wished each of his sons to have a farm of his own and, to that end, the Partnership acquired two more farms in the Bridgwater area. What became known as “One Tree Farm” was bought in 2001 and “Barton Farm” was purchased in 2008. One Tree Farm, where a new four-bedroom farmhouse was built using Partnership funds in 2009, became Adrian’s home and Barton Farm became Philip’s. A new four-bedroom farmhouse was also constructed at the Partnership’s expense on Bower Farm in 2011, and that became Richard’s home.
10. In 2004 the market garden business was transferred from the Partnership to a company, Team Green Growers Limited (“the Company”), in which Albert and his sons each held 25% of the shares. The land which the Partnership owned remained with it.

11. Although Richard, Philip and Adrian constituted a majority of the partners in the Partnership and, later on, held between them 75% of the shares in the Company, important decisions were left to Albert and, before her death, Brenda. Until about 2014, Albert exercised effective control over the Company's affairs.
12. Until at any rate 2009, Richard, Philip and Adrian received relatively little in payment for their work. The Judge explained as follows in paragraph 23 of the Judgment:

“From a base position of between £100-£200 per week in the early 1990s, the amount that each son received (by way of drawings, whether from the Partnership or the Company) rose thereafter to £700 per week between 2009 and 2015. In addition, however: they lived in their respective properties at well below market rent (£100 per week from 2009 onwards); their tax and national insurance liabilities were paid by the business; they had the use of company cars; they received (albeit in relatively small amounts) further payments from time to time from amounts set aside in cash from the flower business; and they had free holidays at a static caravan their parents bought in Exmouth in 2000.”
13. To the extent, however, that profits were not withdrawn, they served to increase the value of the family's interests in the Partnership and, in later years, the Company. As the Judge observed in paragraph 24 of the Judgment, “as the business grew in size, and profits increased, each of the sons had an entitlement to an equal share (with their parents) in the profits generated (first in the Partnership and then in the Company)”.
14. In about 2013-2014, relations between Richard and Adrian, on the one hand, and Albert and Philip, on the other, began to deteriorate. As the Judge noted in paragraph 25 of the Judgment, “Philip had grown much closer to Albert following Brenda's death, partly because Philip had spent time comforting his father, while Richard and Adrian focused more on the business”. On top of that, the business had run into financial difficulties and, in 2014, Lloyds Bank required the Company to address these if it wanted additional overdraft facilities. An independent business consultant was instructed. Having regard to his findings and report, the accountant to the business recommended either that control was assumed by one family member, at least for two or three years, or that the assets of the Company and the Partnership were sold, with remaining cash after repayment of liabilities being distributed to the partners and shareholders. The former option was initially adopted, in that Albert and Philip stepped back from the business and Richard assumed effective control.
15. At this stage, much larger salaries and dividends began to be approved. The Judge explained in paragraph 31 of the Judgment:

“In 2015, for example, Richard and Adrian received gross earnings of approximately £100,000 (made up of salary, bonus and dividends). Philip and Albert continued to receive salaries and dividends, albeit in smaller sums, although not continuing to contribute to the business. Significant pension contributions were also made for the three sons.”

16. On 17 July 2017, Albert died. He left a will dated 30 April 2015 under which he left a gift of £20,000 to his then partner and the residue of his estate, including his interests in the Partnership and the Company, to Philip.
17. Following Albert’s death, the Company and Partnership ceased trading and steps were taken to realise their assets. Bower Farm was sold in June 2021 for £7.8 million plus VAT. Albert’s share in it had been valued for probate purposes at £273,375, after a 10% discount for joint ownership, but the property had been known to have development potential for many years and, in June 2018, outline planning permission was granted for its development into a residential estate. The subsequent sale was for such development. As regards the other farms, One Tree Farm was sold for £885,103 in November 2021 and Philip has agreed to buy Barton Farm for £1.59 million, although completion has been delayed pending resolution of this dispute. Richard and Adrian have each now purchased a farm in the Bridgwater area.
18. The Judge observed in paragraph 37 of the Judgment that, “[a]s a consequence of the retention of profits within the business over more than two decades and the increase in the capital value of the farms themselves, each of Richard and Adrian has benefitted very substantially from his involvement in the family business”. The Judge went on to explain that, “[i]n round terms, the value of final distributions from the Partnership and the Company to each of Richard and Adrian is in the region of £2 million”, while “the value of Albert’s estate is approximately £1.7 million, of which approximately £233,000 represents his personal estate, the rest consisting of his share in the Partnership and the Company”: see paragraphs 37 and 38.
19. The Judge found that Albert and Brenda had led their sons to believe that, if they committed to working in the market garden business, it would be left to them equally. He said in paragraph 93 of the Judgment:

“I conclude that, whether or not Albert or Brenda said in terms that everything would belong to their sons one day, that was the reasonable inference from what they said, and that this was what the sons reasonably understood them to have meant. Specifically, I conclude that Albert and Brenda did make assurances to Richard, Philip and Adrian which were reasonably understood by them to mean that if they committed to working in the family business the business and its assets would ultimately – i.e. after Albert and Brenda had gone – be divided equally among them. Each son therefore had an expectation, reasonably induced by their parents’ assurances, that they could expect to receive a one-third share in the business and its assets.”
20. The Judge also found that Richard and Adrian had relied on their parents’ assurances. The Judge said:

“114. In my judgment, reliance is clearly established in this case. It is common ground that each of Richard and Adrian did in fact devote their working lives, from before they left school until Albert’s death in 2017 to working in the family business. I consider that at least

an inducement to them doing so was the fact that assurances were made by Albert and Brenda, as I have interpreted them above.

115. That was certainly what Richard and Adrian said in their evidence but, more importantly I consider that it is inherently likely that a factor influencing their decision to continue working in the family business for relatively low pay, with all profits being reinvested in the business, was the assurances which I have found were made to them.”
21. The Judge further concluded that Richard and Adrian had suffered detriment and that it would be unconscionable for Albert’s estate to renege on the assurances made to Richard and Adrian. In the circumstances, he considered that the appropriate remedy was to award each of them a one third share of Albert’s interests in the Partnership and the Company. He therefore ordered Albert’s executors to hold his share of the Partnership and his shares in the Company on trust for Richard, Philip and Adrian in three equal shares separately from the remainder of Albert’s estate.

The appeal

22. The appeal has not involved any challenge to the Judge’s findings as to the assurances which were made to Richard and Adrian and their reliance on them. The focus of the appeal has been on the Judge’s conclusion that there was detriment. Mr Alex Troup KC, who appeared for Philip, accepted that the Court might be able to infer detriment where a claimant has pursued an inherently unfavourable course of action (for example, working on a farm for low wages over a long period without any right to an interest in the farm). In other cases (including this one), Mr Troup argued, it is incumbent on a claimant to plead and prove that he forewent an opportunity which, overall, would have put him in a better position (financially or otherwise). In the present case, Richard and Adrian pleaded that, if they had not relied on the assurances to them, they would have pursued a career in the military (in Richard’s case) and sought site/demolition work and probably have become an independent contractor (in Adrian’s). The Judge, however, found that they would not then have accumulated as much wealth as they did by working in the family business. That being so, there can have been the requisite net detriment only if working in the family business had non-financial disadvantages outweighing its financial benefits. The Judge saw “the lifetime commitment by Richard and Adrian to working on the farm” as an unquantifiable detriment, but he did not explain why it was detrimental and in any event failed to weigh any such detriment against the financial benefits. He instead proceeded on the basis that there could be no meaningful comparison and, rather than assessing where the balance between benefit and disadvantage lay, jumped to considering unconscionability.
23. In contrast, Mr Hugh Sims KC, who appeared for Richard and Adrian with Mr Michael Selway, supported the Judge’s decision. The appeal, Mr Sims said, is essentially against findings of fact and evaluations and this Court is slow to interfere with such matters. Here, the Judge applied the right test and arrived at conclusions which were properly open to him. While a Court must weigh non-financial disadvantages against financial benefits however difficult that might be, the Judge can

be seen to have done so. He was, moreover, entitled to find that the lifelong commitment to the family business of Richard and Adrian had been detrimental. While such reliance may not in every case mean that there has been net detriment, it typically will do so and the Court is not obliged either to try to put a figure on the non-financial disadvantages or even to identify a specific alternative course of action which would have been more beneficial. The exercise is not a computational one.

Proprietary estoppel: legal principles

24. Lord Walker identified the three main elements of proprietary estoppel as follows in *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776, at paragraph 29:

“a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance”.

25. Earlier, in *Gillett v Holt* [2001] Ch 210, Lord Walker (as Robert Walker LJ) had noted at 225 that “the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine” and that “[i]n the end the court must look at the matter in the round”. The “fundamental” concern with unconscionability may bear on the level of detriment that is needed to succeed in a proprietary estoppel claim: as Lord Walker observed at 232, “[w]hether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded - that is, again, the essential test of unconscionability”. In *Cobbe v Yeoman’s Row Management Ltd* [2008] UKHL 55, [2008] 1 WLR 1752, Lord Walker, at paragraph 92, expressed the view that unconscionability “does ... play a very important part in the doctrine of equitable estoppel, in unifying and confirming, as it were, the other elements” before saying, “[i]f the other elements appear to be present but the result does not shock the conscience of the court, the analysis needs to be looked at again”.

26. However, the fact that the law relating to proprietary estoppel seeks to prevent unconscionable conduct does not mean that a claimant can succeed without having suffered detriment. To the contrary, Lord Walker noted in *Gillett v Holt* at 232 that “[t]he overwhelming weight of authority shows that detriment is required”. As Lewison LJ observed in *Hudson v Hathway* [2022] EWCA Civ 1648, [2023] KB 345, at paragraph 72:

“Equity acts where the application of the common law would produce an unconscionable result. But it is necessary to have some principles about what equity would recognise as an unconscionable result, otherwise, as Donaldson LJ put it in *Chief Constable of Kent v V* [1983] QB 34, 45, one might as well ‘issue every civil judge with a portable palm tree’.”

In *Jennings v Rice* [2002] EWCA Civ 159, [2003] 1 P&CR 8, Lord Walker (again as Robert Walker LJ) said at paragraph 44 that the doctrine of proprietary estoppel “applies only if these elements [i.e. ‘the quality of the assurances which give rise to the claimant’s expectations and the extent of the claimant’s detrimental reliance on the assurances’], in combination, make it unconscionable for the person giving the assurances ... to go back on them”. In other words, the assurances and detrimental

reliance must make it unconscionable to resile, but unconscionability will not found a claim in the absence of detrimental reliance. As Lord Briggs said in *Guest v Guest* [2022] UKSC 27, [2022] 3 WLR 911, at paragraph 10, “[w]ithout reliant detriment there is simply no equity at all”.

27. As, however, Lord Walker explained in *Gillett v Holt* at 232, detriment is “not a narrow or technical concept” and “need not consist of the expenditure of money or other quantifiable detriment”. In the same case, at 235, Lord Walker expressed the view that the trial judge “must have taken too narrowly financial a view of the requirement for detriment”. In *Campbell v Griffin* [2001] EWCA Civ 990, (2001) 82 P&CR DG23, Lord Walker (once again as Robert Walker LJ) said at paragraph 24 that the claimant “must ... have been suffering and accepting detriment in his devoted care of the Ascoughs”. In *Suggitt v Suggitt* [2011] EWHC 903 (Ch), [2011] 2 FLR 875, His Honour Judge Kaye QC, sitting as a Judge of the High Court, in a judgment upheld by the Court of Appeal ([2012] EWCA Civ 1140, [2012] WTLR 1607), spoke in paragraph 59 of the claimant having suffered detriment through “position[ing] his whole life on the basis of the assurances given to him and reasonably believed by him”. In *Davies v Davies* [2014] EWCA Civ 568, [2016] WTLR 1547 (“*Davies No I*”), the Court of Appeal regarded “greater burdens in terms of working hours and more difficult working relationships” as detrimental: see paragraph 55.
28. Some detriment may be difficult or impossible to quantify in financial terms. Thus, in *Jennings v Rice* Lord Walker commented in paragraph 51 that “the detriment of an ever-increasing burden of care for an elderly person, and of having to be subservient to his or her moods and wishes, is very difficult to quantify in money terms”. In *Habberfield v Habberfield* [2019] EWCA Civ 890, 22 ITELR 96, where the trial judge had found that the claimant had suffered detriment as a result of “position[ing] her working life” on assurances, Lewison LJ commented in paragraph 47 that “[t]hat detriment was incapable of reduction to pounds and pence”. In *Guest v Guest*, Lord Briggs, having observed that detrimental reliance cannot necessarily or even usually be valued, said in paragraph 9:

“In the present case, as in many where the promisee is a young person who gives up other career opportunities to work for their parents on the family farm, a measure of the supposed wages differential to date, coupled with interest, will not begin to recognise the improvement in life which further education, an independent career and the opportunities to develop their own farming or other business might have generated.”

In a similar vein, Lord Briggs said in paragraph 12 that detriment is not fairly capable of being monetarised when it consists of “decisions about education, training and career which (as here) have life-long consequences”. In paragraph 84, Lord Briggs said:

“There was ... little uncertainty about the nature and extent of [the claimant’s] detrimental reliance. He had worked full time at Tump Farm from 1982 until 2015 (33 years) and from 1993 onwards in the expectation of inheritance encouraged by David. His was plainly a form of reliance with whole-life consequences, starting when he left school at 16 and lasting

until he was almost 50. So, however precisely it might be described, its lifetime consequences were extremely difficult to value.”

29. Where a claimant’s reliance on an assurance has resulted in both disadvantages and benefits, the Court must have regard to both. In *Henry v Henry* [2010] UKPC 3, [2010] 1 All ER 988, Sir Jonathan Parker, giving the judgment of the Privy Council, said in paragraph 53 that the trial judge “should have weighed any disadvantages which [the claimant] had suffered by reason of his reliance on Geraldine Pierre’s promises against any countervailing advantages which he had enjoyed by reason of that reliance”. In *Davies No 1*, Floyd LJ said in paragraph 55 that the trial judge had “had to determine whether there was substantial detriment by contrasting the rewards of the job at Genus with its better lifestyle with those of working on the farm (including the free accommodation at Henllan) with its greater burdens in terms of working hours and more difficult working relationships”, adding in paragraph 56 that the judge’s conclusion that there was a “net detriment” was the result of “a classic evaluative exercise” which was “not flawed in a way which would justify this court in interfering”.
30. The fact that a disadvantage may not be susceptible to quantification does not make it a trump card. In a case where reliance has produced both a disadvantage and a financial benefit, the judge must balance the two regardless of whether it is possible to put a figure on the disadvantage. *Davies No 1* provides an illustration of the point. Comparing something that can be expressed in money with something that cannot may not, of course, be easy, but the exercise is nonetheless required. In particular, a claimant who has derived a financial benefit from reliance on an assurance cannot necessarily satisfy the requirement for detriment by showing that he has suffered an unquantifiable non-financial disadvantage. Notwithstanding the difficulty, the Court must weigh the one against the other.
31. There are only limited circumstances in which this Court can interfere with a finding of detriment. In *Davies No 1*, Floyd LJ said in paragraph 33:

“Whether there is detrimental reliance in any given case is an evaluative judgment on the facts, which normally lies within the exclusive province of the trial judge. This court can only interfere with the judge’s assessment of that issue if it is perverse or clearly wrong: *Suggitt v Suggitt* [2012] EWCA Civ 1140 per Arden LJ at [37].”

The grounds on which it is open to an appellate Court to interfere with an evaluative assessment were more fully explained in *R (R) v Chief Constable of Greater Manchester* [2018] 1 WLR 4079, at paragraph 64, and *In re Sprintroom* [2019] 2 BCLC 617, at paragraphs 76 and 77. It can be seen from such cases that an appellate Court will interfere only if it considers the decision under appeal to have been an unreasonable one or wrong as a result of some identifiable flaw in reasoning, “such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion”.
32. It should finally be noted that in *Gillett v Holt*, at 232, Lord Walker said that the detriment which a claimant alleges “must be pleaded and proved”.

Detriment: the Judge's analysis

33. Paragraphs 122 to 136 of the Judgment have the heading “Detriment”. In paragraph 122, the Judge recorded that Mr Troup had “submitted that even if Richard and Adrian were induced by their parents’ assurances ... to commit to working in the family business, then they suffered no detriment because they derived substantial benefits as a result of that commitment, and those benefits outweighed any detriment suffered by them”. Rejecting that submission, the Judge said in paragraph 124 that he had “concluded ... that the element of detriment is satisfied in this case”.
34. In paragraphs 125 to 132, the Judge addressed a submission then made on behalf of Richard and Adrian to the effect that it was not appropriate to take any account of countervailing benefits when considering whether there had been sufficient detriment. The Judge, however, (correctly) concluded in paragraph 132 that “balancing the detriment against countervailing benefits can be considered as part of the question whether any detriment was suffered at all, as much as in deciding upon the appropriate remedy”.
35. The Judge went on:
 - “133. [*Spencer v Spencer* [2023] EWHC 2050 (Ch)] ... reinforces, however, a point relied on by Mr Sims [i.e. counsel for Richard and Adrian], that it is not possible to put a money value on the unquantifiable detriment of committing an entire working life to a family business, giving up the chance to build an alternative life elsewhere, and that such commitment is likely to constitute detrimental reliance. I agree that the lifetime commitment by Richard and Adrian to working on the farm is not capable of being quantified. It is true that the *benefits* received by them are largely capable of being quantified – by reference to the value of the distributions made, and still to be made, following the sale of the farming assets and the winding-down of the Partnership and the Company. But it is still not possible to conduct a meaningful comparison in financial terms with the *detriment* suffered by them.
 - ...
 135. Notwithstanding the simple attraction of the proposition that the claimants’ actions in committing their working lives to the family business cannot be described as a detriment in view of the substantial financial benefits they have received by so doing, I think that it is in the end an overly-simplistic analysis.
 136. This is best explained by reference to the underlying question: would it be unconscionable in all the circumstances for Albert to renege, in 2015, on the assurances I found had been made by him and Brenda

over many years. In my judgment it would, and what makes it so is the *continuing* commitment by Richard and Adrian for a long time even after they had already acquired their interest in the Partnership and shares in the Company. Had it been made clear throughout that they could not rely on ultimately receiving an equal one-third share in the business, but that their parents were free to transfer their (combined) 40% share to outsiders or to Philip alone, then Richard and Adrian would have had options open to them, among which would have been the option of taking their existing share in the Partnership and developing it in some other way. It is no answer to this to say that they may not have appreciated that they had such an option (as appears to be the case with Adrian when he temporarily left the business in the mid 1990s), because the issue was never forced. Had it been, the existence of that option would have become clear.”

36. Some of the previous section of the Judgment, headed “Reliance”, is also relevant. The Judge said this in the latter part of that:

“117. The only alternative career which Richard positively contemplated was in the military. Mr Troup cited the examples of Albert’s eldest brother, Jim, and of Geoffrey Potter, as men who followed an army career without acquiring the wealth which the sons now enjoy from the shares in the business they acquired during the parents’ lifetimes. When Adrian temporarily left the business, it was for work which was also unlikely to have generated such wealth.

118. I accept it is likely, had Richard chosen a career in the military, or had Adrian done the sort of other work he did when he temporarily left the family, that they would not have accumulated as much wealth as they have done by working in the family business. It is, however, impossible to know what either of them would have done, over the 40 or more years that they have in fact worked in the family business, had they chosen some other path.

...

120. ... I am satisfied that the assurances made by the parents that each son would ultimately be left with an equal share with the others in the family business was a factor that induced Richard and Adrian to continue working for the family business over such a long period.

121. I consider, in particular, that it remained a factor in the later years, when Richard and Adrian devoted a proportionately greater amount of time to the business than Philip. Had they understood that, in so doing, they were not to receive any part of Albert's share when he died, I think they would have acted differently."

Detriment: the pleaded case

37. In paragraph 49 of their particulars of claim, Richard and Adrian said that, "although their detrimental reliance is a matter of evidence", the matters which followed were "highlighted". They then referred, in sub-paragraphs of paragraph 49, to "Working very hard for long hours for low/poverty wages over years uncounted", "No pension provision (until the last few years)", "Loss of social enjoyment and substantial detriment to family life" and "Loss of alternative careers".

38. In paragraph 50, this was said:

"If it had been made clear to either of them that the promises would not be kept – and the Claimants stress they simply seek the promised equality between the Sons and no special advantage – then:

50.1 Richard will say that he would have returned to pursue a career in the military.

50.2 Adrian will say that he would have left the family business and sought site/demolition work driving a 360 slew and would probably have become an independent contractor."

39. A "360 slew" is, I understand, a kind of "telehandler".

Discussion

40. As I have indicated, it seems to me that, when deciding whether a claimant has suffered detriment as a result of reliance on an assurance, the Court must weigh any non-financial disadvantage against any financial benefit even where the disadvantage is not susceptible to quantification. The exercise may be a difficult one, but it still has to be undertaken. I did not understand Mr Sims to disagree.

41. The question which then arises is whether the Judge undertook such an exercise in the present case. An obvious argument in favour of answering that in the negative is that he did not do so in terms, instead focusing in the last paragraph in the section of the Judgment devoted to "Detriment" on what he termed the "underlying question", "would it be unconscionable in all the circumstances for Albert to renege, in 2015, on the assurances I found had been made by him and Brenda over many years". Further, paragraph 133 of the Judgment, quoted in paragraph 35 above, can be said to suggest that the Judge considered that the existence of "unquantifiable detriment" made it impossible, or at least unnecessary, to attempt a comparison with financial benefits.

42. On balance, however, I agree with Mr Sims that the Judge can be discerned to have carried out the necessary evaluative exercise. He said in the last sentence of paragraph 133 of the Judgment that it was not possible to conduct a meaningful comparison “in financial terms”, not that it was not possible to carry out *any* comparison. He had begun this section of the Judgment, moreover, by recording Mr Troup’s submission that Richard and Adrian had suffered no detriment “because they derived substantial benefits as a result of that commitment, and those benefits outweighed any detriment suffered by them”. It is fair to infer that paragraph 136 of the Judgment provided the Judge’s response to that contention. The Judge explained there that he considered that reference to the “underlying question” of unconscionability “best explained” why “the proposition that the claimants’ actions in committing their working lives to the family business cannot be described as a detriment in view of the substantial financial benefits they have received by so doing” was “overly-simplistic”. In the context, the Judge is, I think, to be understood to have taken the view that the detriment from Richard and Adrian “committing their working lives to the family business” outweighed the financial benefits.
43. Was, then, the Judge entitled to find that, by “committing their working lives to the family business”, Richard and Adrian had suffered detriment outweighing the financial benefits which they had derived from working in the family business? In my view, he was.
44. A *first* point is that I do not think the Judge was precluded from so finding by the terms of the particulars of claim. It is true that these identified only two alternative careers, but they also “highlighted” “Working very hard for long hours for low/poverty wages over years uncounted” and “Loss of social enjoyment and substantial detriment to family life” as well as referring to “Loss of alternative careers” in general terms.
45. *Secondly*, the authorities seem to me to show that, where a claimant has devoted his working life to a particular course in reliance on an assurance, it may be proper for the Court to find detriment even if the claimant has not shown that he would otherwise have been likely to take a specific alternative course which would probably have been more beneficial.
46. *Gillett v Holt* is particularly significant in this connection. In that case, Lord Walker said this at 234-235:

“It is entirely a matter of conjecture what the future might have held for the Gilletts [i.e. the claimant and his wife] if in 1975 Mr Holt [i.e. the first defendant] had (instead of what he actually said) told the Gilletts frankly that his present intention was to make a will in their favour, but that he was not bound by that and that they should not count their chickens before they were hatched. Had they decided to move on, they might have done no better. They might, as [counsel for the defendants] urged on us, have found themselves working for a less generous employer. The fact is that they relied on Mr Holt’s assurance, because they thought he was a man of his word, and so they deprived themselves of the opportunity of trying to better themselves in other ways. Although the judge’s view,

after seeing and hearing Mr and Mrs Gillett, was that detriment was not established, I find myself driven to the conclusion that it was amply established. I think that the judge must have taken too narrowly financial a view of the requirement for detriment, as his reference ... to ‘the balance of advantage and disadvantage’ suggests. Mr Gillett and his wife devoted the best years of their lives to working for Mr Holt and his company, showing loyalty and devotion to his business interests, his social life and his personal wishes, on the strength of clear and repeated assurances of testamentary benefits. They received (in 1983) 20% of the shares in KAHL, which must be regarded as received in anticipation of, and on account of, such benefits. Then in 1995 they had the bitter humiliation of summary dismissal and a police investigation of alleged dishonesty which the defendants called no evidence to justify at trial. I do not find Mr Gillett's claim startling. ... I would find it startling if the law did not give a remedy in such circumstances.”

47. Detriment was thus “amply established” even though it was “entirely a matter of conjecture what the future might have held for the Gilletts” and they “might have done no better” “[h]ad they decided to move on” (in particular, because they “might ... have found themselves working for a less generous employer”). In circumstances where the Gilletts had “devoted the best years of their lives to working for Mr Holt and his company”, it sufficed that they had “deprived themselves of the opportunity of trying to better themselves in other ways”, and that despite the fact that the Gilletts had been given 20% of the shares in Mr Holt’s company.
48. *Suggitt v Suggitt* points in the same direction. In that case, where the claimant’s father left his estate to the claimant’s sister, the claimant “did work ... unpaid from time to time”, was “based on the farm” and “positioned his whole life on the basis of the assurances given to him”: see paragraph 38 of the judgment of Arden LJ (as she then was). However, the claimant had received “many benefits” from his father and, while the claimant “was available for work when [his father] asked him to do it”, there was “no evidence ... that [the claimant] would have pursued some other career which he expressly gave up”: see Arden LJ’s judgment, at paragraph 40. The Court of Appeal nevertheless upheld a finding of detriment.
49. In *Habberfield v Habberfield*, it was argued on behalf of the defendants to a proprietary estoppel claim that “in evaluating detriment the judge had not taken account of the fact that this was not a case in which Lucy [i.e. the claimant] had made life-changing decisions”, that the “main detriment was financial in nature”, that “the judge had been able to quantify that” and that Lucy had “not given up any other opportunity”: see paragraph 48. However, Lewison LJ, with whom Moylan LJ and Rose LJ (as she then was) agreed, said that “it is not possible to recreate an alternative life for Lucy in a world without the assurances” adding:

“As Lord Walker said in *Thorner v Major* at [65]:

‘But it is unprofitable, in view of the retrospective nature of the assessment which the doctrine of proprietary estoppel requires, to speculate on what might have been.’”

50. More recently, in *Spencer v Spencer* [2023] EWHC 2050 (Ch), at paragraph 97, Rajah J accepted a submission that “where a parent promises a child a farm if they work on the farm until the parent dies, and the child does what they were asked to do, giving up the possibility of other options, and positioning their working life based on the assurances, that is likely to amount to detrimental reliance”.
51. For his part, Mr Troup relied on *Creasey v Sole* [2013] EWHC 1410 (Ch), [2013] WTLR 931, where, in the course of rejecting a proprietary estoppel claim on a number of grounds, Morgan J said in paragraph 111:

“In order to determine whether Michael acted to his detriment in reliance on some promise or assurance, it is necessary to consider what alternative course or courses might have been open to him. If the arrangement which he had with his parents was profitable to him but he gave up the opportunity of a more profitable alternative, then a decision, in reliance on a promise or assurance, to stay with the arrangement could be said to be detrimental to him. Conversely, if there was no better alternative available to Michael other than the arrangement which applied as between himself and his parents, then the continuation of that arrangement would not amount to a detriment to Michael and that would be so whether the arrangement was profitable or unprofitable. In the past, particularly in the case of a party who takes on or continues with an unfavourable arrangement, the courts have been prepared to take the view that the party must surely have had better opportunities, which he has foregone, to his detriment. Such an approach was adopted in the cases of *Gillett v Holt* [2001] Ch 210 (see at 235 A-B), *Thorner v Major* [2009] 1 WLR 776 (see at [4]) and *Henry v Henry* [2010] 1 All ER 988 (see at [61]). In *Henry v Henry* [2010] 1 All ER 988, the Privy Council said that it was appropriate to weigh the benefits which a party obtained by relying upon a promise or assurance against the disadvantages which resulted from such reliance.”

In paragraph 114, Morgan J concluded as follows:

“My overall conclusion is that Michael has not established the necessary ingredients of a promise or an assurance, reasonable reliance and substantial detriment so as to raise an equity against his father to entitle him to a benefit greater than the benefit which he will take under the father’s will. As regards the mother, the position is even more clear because she did not say anything relevant during the argument in 1992 and, in any event, she left to Michael her half share in the land defined in her will as ‘Michael’s Land’ and further interests in land in addition. The authorities stress that a claim to a proprietary estoppel must be looked at in the round. Standing back in this case, I conclude that Michael has not made out a case in equity which entitles him to inherit more than his parents’ wills provide for him.”

52. While Morgan J’s comments may have been appropriate in the context of the case before him, I do not think they should be taken as laying down a test of general application. My own view, as I have indicated earlier in this judgment, is that, to succeed in a proprietary estoppel claim, a claimant needs to show sufficiently substantial net detriment of whatever kind. Where, however, a claimant has made a life-changing choice and over many years undertaken work in reliance on an assurance, the Court will probably be prepared to treat loss of opportunity to lead a different life as itself detrimental without requiring the claimant to prove, or itself trying to determine, quite what the claimant would have done and with what consequences. The fact that the claimant “deprived [himself] of the opportunity of trying to better [himself] in other ways” (to adapt words of Lord Walker in *Gillett v Holt*) will itself be taken to amount to detriment; the Court will not be inclined to attempt the (probably unrealistic) exercise of “recreat[ing] an alternative life ... without the assurances” (to adapt words of Lewison LJ in *Habberfield v Habberfield*). In practice, therefore, as Rajah J said in *Spencer v Spencer*, detrimental reliance is likely to be found to exist where “a parent promises a child a farm if they work on the farm until the parent dies, and the child does what they were asked to do, giving up the possibility of other options, and positioning their working life based on the assurances”. That will not automatically be the case, however. If, say, it can be seen that the claimant has derived considerable financial benefits from working on the farm, those must be weighed against the loss of the “possibility of other options”.
53. The *third* point is that it was not unreasonable for the Judge to conclude that there was the requisite detriment on the facts of the present case. The Judge plainly considered Richard and Adrian to have made life-changing choices on the strength of their father’s assurances. On the Judge’s findings, Richard and Adrian “devote[d] their working lives, from before they left school until Albert’s death in 2017 to working in the family business” (paragraph 114 of the Judgment); despite Richard and Adrian’s interests in the Partnership and Company, their parents took the “important decisions” while Brenda was alive, and Albert “exercised effective control” over the Company’s affairs until about 2014 (paragraph 22); Richard and Adrian were required “to work long hours, for low wages”, “with profits being ploughed back into the business” (paragraphs 87 and 92); and Richard and Adrian “would have had other options open to them” including “the option of taking their existing share in the Partnership and developing it in some other way” (paragraph 136). In all the circumstances, the Judge arrived at a conclusion which was open to him. Whether or not a different judge could have taken a different view is neither here nor there.

Conclusion

54. I would dismiss the appeal.

Lady Justice Falk:

55. I agree.

Lord Justice Moylan:

56. I also agree.