Neutral Citation Number [2021] EWHC 1672 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No: PT-2019-LDS-000020**

BUSINESS AND PROPERTY COURTS IN LEEDS

PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Before:

ANDREW LENON Q.C. (sitting as a Deputy Judge of the Chancery Division)

BETWEEN:

LISA MARY PICKERING
(in her personal capacity and as executrix of the estate of NORA LOUISE HUGHES, deceased)

Claimant

and

(1) CHARLES ARTHUR HUGHES
(2) JOHN ROBERT HUGHES
(3) LORRAINE HUGHES
(4) JAMES CHARLES HUGHES
(5) JODIE HUGHES
(by her litigation friend LORRAINE HUGHES)

Defendants

Approved Judgment

Richard Wormald QC and Amanda Hadkiss
(instructed by Thomas Mansfield Solicitors Limited) for the Claimant

Brie Stevens-Hoare QC and Charlotte John
(instructed by Ansons Solicitors Limited) for the Defendants

Hearing dates 9, 12, 13, 14, 15, 16, 22 April 2021

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

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 14.00 on 18 June 2021.

Contents

Introduction

1. This judgment follows the trial of various claims between members of the Hughes family relating to a portfolio of properties and certain chattels. The members of the family are referred to in the judgment by their given names, as they have been throughout the proceedings.

2. The properties in question were jointly acquired by the late Nora Hughes ("Nora") who died in 2017, and her husband Charles Hughes ("Charles") (the first defendant). Nora and Charles had three children, Lisa (the claimant) John (the second defendant) and David (who was a witness but is not a party to the proceedings). John is married to Lorraine (the third defendant), and James and Jodie (the fourth and fifth defendants) are their children.

3. For many years, the family was content to enter into informal arrangements in relation to the properties but in 2015 there was a dispute between members of the family which led to it splitting into two "camps". The two camps comprise, on the one hand, Lisa, Nora and David, and, on the other, John and his immediate family and Charles.

4. The main issue to be determined at the trial was as to the beneficial ownership of a property known as Edlington Wood House, Edlington, near Doncaster and an adjoining Annex ("Wood

House") and a parcel of 25 acres of land surrounding it ("the 25 acres"). John and Lorraine claim that Wood House and the 25 acres are held on constructive trust for them, alternatively that Wood House and the 25 acres are subject to a proprietary estoppel entitling them to the whole beneficial interest. Charles supports the claim but the claim is denied by Lisa on behalf of Nora's estate. The other issues to be determined arise out of claims by Lisa for orders for sale and occupation rent and claims by Charles for the return of certain chattels which he alleges belong to him.

The Witnesses

5. The family witnesses from whom I heard oral evidence were Lisa, David and, (briefly and uncontroversially) Nora's sister Rosie, all of whom gave their evidence remotely by CVP, and John, Charles, Lorraine and James, all of whom gave their evidence face to face after the hearing moved from London to Leeds. There was also an Affidavit from Nora.

6. The evidence of the family witnesses mainly addressed the informal agreements and understandings which it was alleged had been made concerning the disputed properties and chattels. Taking into account the inevitable fallibility of the witnesses in recalling past events, particularly events which took place many years ago, the motives of the witnesses in giving evidence concerning matters in which they had a direct financial interest, their ingrained sense of what they and other family members are entitled to and their strong personal feelings towards the other family members, I came to the conclusion that I should treat the evidence of the family witnesses with considerable caution. As noted by Robert Goff LJ in *Armagas Ltd v Mundogas SA* [1985] 1 Lloyd's Rep 1, 57:

> "It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, references to the witness' motives and to the overall probabilities can be of very great assistance to a judge in ascertaining the truth."

7. Lisa had an exceptionally close relationship with Nora. Lisa's relationship with Charles and John, which appears to have never been close, broke down completely following the family dispute in 2015. Lisa worked as the bookkeeper for the family business and gave evidence as to, amongst other things, the funding of the purchase price and renovation works at Wood House. Her recollection on a number of matters (such as her adamant assertions that her mother

invariably signed guarantees given on behalf of the family companies and that David had been a director of the family company J.L.D. Metals Ltd) was shown to be inconsistent with the contemporaneous documents and overall I did not regard her testimony as entirely reliable.

8. David fell out with Charles and John in about 2005 after which he ceased to be involved with the family business and went his own way. His evidence was mainly concerned with family discussions which were said to have taken place concerning the Edlington Wood properties. It was submitted on behalf of the defendants in closing that David's participation in the proceedings stemmed from his dependence on Lisa for provision from Nora's estate. Whether or not this was true (and it was not put to him in cross-examination), I did not regard him as a neutral observer given his obvious antipathy towards John.

9. Rose gave uncontentious evidence about Nora's complaints about Lorraine and her family being in Edlington.

10. Had she been alive, Nora would have been a key witness in the case. Shortly before her death, she swore an Affidavit setting out her record of dealings with the family properties and companies. The reliability of the Affidavit could not be tested by cross-examination and I accept the defendants' submission that her account of the background was partial and her description of the circumstances in which the Edlington Wood properties were acquired was incomplete and inaccurate in material respects.

11. Charles is now aged 91 and frail. In view of his age, poor eyesight and hearing difficulties certain accommodations were made in order to facilitate his giving of oral evidence. Charles stated in cross examination that he did not recall having agreed, read, or signed his witness statement around six weeks previously and he answered many questions by stating that he could not remember, did not know, or provided no response to the question asked, including where these questions directed at matters discussed within his own witness statement. My impression was nevertheless that Charles was able to follow the questions put to him.

12. Charles has a close relationship with John and was plainly keen to support John's claim. He confirmed the truth of John's witness statement and, in cross-examination, volunteered supportive evidence about material matters which, if accurate, I would have expected to have been included in his and John's witness statements. Overall, I consider that I should not rely on Charles's uncorroborated evidence.

13. John's witness statement includes a detailed account of the family history and dealings with

companies and properties including the oral agreement which he alleges was made in 1983 or 1984 concerning his and Lorraine's future ownership of Wood House and the renovation works carried out to it. He was unable to explain satisfactorily some inherently implausible features of the alleged arrangement with Nora and Charles to which I refer later in the judgment.

14. James gave evidence as to the amount which he claimed that he had spent on fixtures and fittings in the Annex adjoining Wood House.

15. Apart from the family witnesses, there was a witness statement from Ian Potter, a partner in the solicitor firm of Ward Bracewell & Co, later Taylor Bracewell, formerly the family solicitor who acted for Charles and Nora from 1979 until his retirement in 2011. This was adduced by Lisa pursuant to a Civil Evidence Act notice on the ground that Mr Potter was too unwell to attend the hearing. The witness statement confirmed an earlier signed statement made by Mr Potter in 2019. I regard the evidence of Mr Potter, as a solicitor and neutral observer with close involvement in Charles and Nora's property transactions and Wills, as a valuable source of information as to Charles and Nora's intentions with regard to the ownership and the bequeathing of their assets.

16. The defendants also called Paul Gregory and Kelvin Fitton, who are partners in the accountancy firm of Smith Craven, who gave evidence by video link about a family meeting in December 2015 and Bryan Hargreaves, who gave evidence about works carried out at Wood House.

The Background

The Family business

17. Nora and Charles built up their wealth through the family's business and various companies, and they together purchased and maintained a portfolio of properties. They started life in the East End of London where from the mid 1950's they operated a rag trade business which Charles had inherited from his grandfather and father. It was a jointly run business with Charles in overall charge but with Nora working independently and productively in her own right. After raising their family, Nora and Charles married in 1982 and lived together until 1993 after which they lived apart although they remained on reasonably good terms until 2015.

18. Nora's relationship with Charles was a strained one because of Charles's extra-marital affairs over the years. Charles described his relationship with Nora as follows:

"Whatever else happened we had a bond. But I did feel guilty about the affairs and it meant that I tended to over-compensate in some ways. I would let Nora make the final decision about things in order that I had a quiet life. If it was a business decision or involved a large sum of money we would discuss together. But anything relating to my daughter Lisa, Nora decided and I would usually back down if I disagreed. She was the apple of Nora's eye. Nora would always stick up for her whatever she did".

John's evidence was to similar effect: "*She [Nora] definitely ruled the roost and dad went along with what she said*".

19. In the late 1960s Nora and Charles decided to buy a scrap metal and rag yard at Black Bank, near Doncaster. Nora moved to Doncaster with their two children, John (born in 1958) and Lisa (born in 1961), to operate the business there while Charles continued to carry on the business in London. David was born in 1969. The business carried on at Black Bank was very profitable.

20. In 1981 the Black Bank site was acquired by Doncaster Council pursuant to a compulsory purchase order. Charles and Nora's claim for compensation led to proceedings before the Lands Tribunal and eventually to an appeal to the House of Lords which upheld their claim. They were awarded compensation in excess of £1 million.

21. In 1980 a new company, JLD Metals Ltd ("JLD"), was incorporated to continue the scrap metal and rag trade business that had been carried on at Black Bank. John, Lisa and David were its shareholders and John and Lisa its directors. The business of JLD was chiefly based in Newcastle. John, David and Lisa all worked for JLD at various times.

22. Nora's involvement in the family business ceased from around 1982 but Charles continued to be actively involved.

Property purchases

23. In 1979 Nora and Charles jointly purchased and paid for land consisting of about 20 acres known as "Tilts Farm", Doncaster. In around 1980 they purchased a second residential property known as "The Firs", Hatfield, Doncaster.

24. In about 1981 Nora and Charles transferred a portion of the land at Tilts Farm to John and Lorraine, who had married two years previously, to enable them to build a family home. Nora and Charles also paid John and Lorraine £10,000 at this time. A four bedroomed house known as Tilts House was built on the transferred land into which John and Lorraine moved and lived

between 1982 and 1984. They are still the legal owners of Tilts House.

25. There was an issue in the case as to whether Tilts Farm was gifted to John and Lorraine which, as explained later in this judgment, is relevant by way of background to the central issue of the ownership of Wood House. Lisa's case, supported by Nora's Affidavit, is that the land on which Tilts House was built was gifted by Nora and Charles to John and Lorraine and that the payment of £10,000 was a gift towards the building costs. John's evidence was that the land was initially gifted to them but that, at Nora's insistence, he paid for it by transferring £7,500 to Nora in cash at the rate of £28 per week over five years and that the gift of £10,000 was not, in the end, used towards the building costs but was instead spent on the purchase of a site acquired by JLD for its business. I prefer the evidence of Lisa and Nora on this issue. If, as was common ground, the sum of £10,000 was a gift to John and Lorraine, it is inherently likely that the land was also gifted and not required to be paid for. There is no convincing explanation as to why the £10,000 gift intended for the building work at Tilts House would instead have been used to fund a site purchase by JLD. It is more likely that the money was spent on the building work at Tilts House.

Edlington Wood

26. It is common ground that in the early 1980s a property known as Edlington Wood, near Doncaster, was owned by an individual named Mr Lanni who wanted to sell it. Edlington Wood at this time comprised Wood House (which was lived in by Mr Lanni but which was in a dilapidated condition), the Annex and a barn, surrounded by approximately 315 acres of land comprising a mixture of woodland and arable land. The land at Edlington Wood was rented by the Hughes family business when operating at Black Bank for the purpose of cable burning. This was a process by which plastic coating was removed from metal cables purchased from BT in order to enable the cables to be recycled. Charles and Nora decided to purchase Edlington Wood partly for the purpose of cable burning (although this was not done for long after the purchase as it was illegal and a different way of removing the plastic was developed), and partly as an investment for redevelopment.

27. Edlington Wood was (and remains) divided between two separate legal titles. The first legal title includes only Wood House and its immediate curtilage (the "Wood House Title"). The second legal title consists of the remaining land at Edlington Wood (the "Land at Edlington Wood Title").

28. On 8 November 1982 Nora and Charles entered into two written contracts to jointly purchase each of the Edlington Wood titles for the price of £150,000 per title, with an agreed completion date of 18 May 1984 or within four weeks of the receipt by them of the compensation payable in respect of the compulsory purchase of Black Bank. Lisa asserted that the purchase price was £400,000 based on a note prepared by the late David Butler, a partner in the firm of John S Ward & Co, who provided accounting services to the family ("Mr Butler") in 2006 but from the earlier documents this appears to be incorrect. Nora and Charles became the legal owners of the Wood House Title on 12 June 1984 and the legal owners of the Land at Edlington Wood Title on 10 January 1986. It is not clear why there was a delay of two years in the completion of the transfer of the Land at Edlington Wood Title but the most likely explanation is that Nora and Charles wanted more time to raise the necessary funds.

29. Precisely how the purchase of the two Edlington Wood titles was funded is unclear. It is common ground that the purchase was funded in part from the proceeds of the sale of The Firs, where Nora had been living and which was worth approximately £100,000. Charles also alleges, and I accept, that some £55,000 of the purchase consideration was derived from the proceeds of sale of land held in his name at Wroot. There was also a joint mortgage taken out by Nora and Charles towards which JLD made payments. Lisa claimed that JLD's payments represented deferred consideration paid to Nora and Charles by JLD by way of payment for the business and assets of the Black Bank business which had been transferred to JLD. This was disputed by John who claimed that the plant and machinery of the Black Bank business had been purchased by JLD at a public auction. Lisa's case on this point is undermined by the absence of any reference in JLD's accounts to any liability to Nora and Charles and by the fact that Nora and Charles had been paid compensation on the footing that the Black Bank business was totally extinguished. In my view, what probably happened was that the business and assets from Black Bank were transferred by Nora and Charles to JLD, their children's fledgling company without any formal agreement and for no agreed consideration and that, in return, profits from JLD were treated as family money to be used for the purpose, amongst others, of paying off the mortgage on the Edlington Wood properties acquired by Nora and Charles.

30. It is common ground that neither John nor Lorraine personally contributed any sum towards the purchase price of the Edlington Wood Titles.

31. As noted above, in order to enable the purchase of the Edlington Wood Titles to proceed, Charles and Nora had to sell The Firs and find somewhere else to live. In circumstances which are

addressed further below, John and Lorraine agreed to move out of Tilts House in order to allow Charles and Nora to take up occupation there. John, Lorraine and their disabled child Johnnie (now deceased) lived in a caravan near Wood House while Wood House was renovated. There is a dispute as to who paid for the renovations and the other works at Wood House which is addressed later in the judgment.

32. Lorraine and John moved into Wood House in 1985. Further works were undertaken to Wood House in 2003. In 2005 John and Lorraine separated (although they remain married) and John moved out of Wood House to a property next door to Tilts House, 5 The Hedgerows. He has not returned to live at Wood House.

33. The Annex at Edlington Wood was renovated in the late 1980s after which Lorraine's parents moved in and lived there until their deaths in 2007 and 2009. James, with John and Lorraine's support, renovated the Annex in about 2011 and moved in, making his home there.

The Guarantees

34. Nora and Charles provided the Edlington Wood titles as security to Barclays Bank in support of guarantees given on behalf of the family businesses on a number of occasions. Almost all of the 25 acres falls within the Land at Edlington Wood Title which was provided as security on a number of occasions. Mr Potter assisted with the provision of the guarantees. It is unclear whether Wood House itself was charged. The bank was informed of John/Lorraine's occupancy but was not informed of any ownership interest by them in the property. Charles's claim that the bank was aware that the house was not really owned by him and Nora is not credible, given that it was Nora and Charles who were asked by the bank to provide security.

The Agricultural Tenancies

35. A farm business tenancy agreement between Nora and Charles as landlords and John as tenant, granting John a ten-year lease from 28 March 2002 of the land covered by the Edlington Wood Titles, was drafted and provided to John although it was never executed. According to John's witness statement, the tenancy was explained to him by Mr Butler on the footing that, if the family business went under and bank loans had to be repaid, the bank might try to evict John pursuant to their charges and the tenancy was intended to protect John and his family from eviction. According to the witness statement, when Lisa found out about the tenancy, she was

livid and called John telling him that he had no claim to Wood House. John replied that he did and that he owned it; he called Charles and Nora and went to speak to them at Tilts House when they both told him not to worry about what Lisa had said and that the property (meaning Wood House and the 25 acres) was his and that it was always going to come to him: "it's yours – she's just causing trouble".

36. Lorraine confirms that she was told by John about these events at the time. Lisa denied the whole episode.

37. I accept John's account of the farm tenancy agreement and of Lisa's voicing of objection to any claim by him to Wood House, which has the ring of truth. I also accept that John may well have been told by Charles not to worry about Lisa. I do not, however, accept that John was told that Wood House was his or that it would pass to him when Charles and Nora died (or, if he was told this, that it was with the knowledge of Nora). I conclude for reasons set out later in this judgment that no agreement had been reached or representation made concerning John's ownership of Wood House and it is therefore highly unlikely that any such assurance would have been given in 2002.

38. Some years later, in 2016 a farm tenancy agreement was executed as a deed between Charles as landlord and John as tenant. This was also intended for John's protection and was never activated in the sense that no rent was demanded or paid.

The Wills

39. In 1998 Nora and Charles instructed Mr Potter to act for them in respect of their Wills. Over the next seventeen years Charles and Nora each made five Wills with advice and assistance from him or his firm Taylor Bracewell. The Wills and related notes and correspondence in the Taylor Bracewell file are an important source of information as to the understanding on the part of Nora, Charles and the professional advisers of the ownership of Wood House and Nora and Charles's testamentary intentions. They show that Wood House was consistently treated as an asset of Nora and Charles and that there was no intention during this period specifically to bequeath that property to John. They also show that throughout this period, Nora and Charles intended that, on the first death, the family assets would pass to the survivor. In the words of Mr Potter's signed statement, "the survivor was to have total control of the family assets".

40. The facts appearing from these documents are as follows.

a. Nora and Charles executed mirror Wills on 3 March 1998. Their Wills made specific bequests of certain minor items to individual children, including in Charles's case, two Hunter watches, a platinum ring and a gypsy ring; these bequests were repeated in his subsequent Wills. The residue was to be left to the survivor of the two or, if the other predeceased them, the residue was to be divided equally between their three children. The Wills contained no specific gift of Wood House to John or to John and Lorraine.

b. A file note headed "*Charlie and Nora Assets 2006*" which was probably drawn up by Mr Butler, included the following:

> "EDLINGTON ESTATE "NORA 50% CHARLIE 50%
>
> …
>
> PURCHASED EARLY 1980S DEFERRED COMPLETION COST £400,000 £150,000 DEPOSIT BALANCE LESS SALE OF LAND AT WROOT £80,000 - £100,000 ISH
>
> MADE UP OF
>
> EDLINGTON HOUSE
>
> EXTENSIONS AND REFURBISHMENTS PAID BY JOHN VIA BONUSES ETC JLD CIRCA £100,000 MID TO LATE 1980S
>
> OCCUPIED JOHN AND LORRAINE AND FAMILY
>
> PART BLACK BANK GAIN ROLLED INTO FARM HOUSE ORGINAL COST"

c. According to a file note dated 26 September 2007, Mr Potter met Mr Butler for a general discussion in relation to Nora's and Charles's Wills. The note listed the assets of Charles and Nora including:

> "Edlington Wood and House owned jointly by Charlie and Nora subject to a tenancy in favour of John, the occupancy of Lorraine and two Grazing Agreements".

d. According to a meeting note dated 15 May 2008, Mr Potter attended Nora and Charles at their home to discuss their Wills which they wished to update. It states that Charles and Nora wished to retain the specific bequests in the 1998 Wills and, as before, to leave everything to the survivor on the first death. The note includes the following reference to Wood House:

> "We discussed the situation with regard to the ownership of various properties. They owned Edlington Wood house which is occupied currently by Lorraine Hughes, John's

wife, following the separation of John and Lorraine. There is no specific wish that John should inherit this property and it should merely form part of their composite estate."

e. In his signed statement, Mr Potter said that at this meeting Nora and Charles mentioned that John had spent a substantial sum in the region of 100k in the 1980's improving the property. He also said that that on a number of occasions he expressed reservations to both Charles and Nora about the fact that Wood House was owned by them but occupied by John and Lorraine and suggested that it would be sensible to have ownership and occupation of Wood House regularised in case of any future dispute but that Charles and Nora never instructed him to take any action in this respect.

f. By a letter dated 23 May 2008 to Mr Butler, Mr Potter asked for information about Nora's and Charles's assets and enclosed a schedule which Nora and Charles were asked to confirm which included the following:

"Edlington House Wood and Land (this is subject to an occupancy of John/Lorraine Hughes)."

g. In a meeting note dated 9 July 2008, Mr Potter recorded a meeting with Mr Butler which included the following:

"Edlington Wood house and land – we noted that the house is occupied by Lorraine Hughes following her separation from John. There is some mention of a Tenancy Agreement but I commented that I have never seen such an Agreement. There may be some agricultural relief on the land and there is a substantial amount of timber which will qualify for relief.

It must be noted that John has improved the house substantially to the tune of around £100,000 in the late 1980 and on this basis he must have an interest in the house."

h. By an email dated 18 July 2008 from Mr Butler to Mr Potter, Mr Butler commented that John was "*pressing for the Wills to be done to avoid mainly inheritance tax and very understandable problems that would arise"* and noted that "*Wills were not Charlie's strong point, that like many people he did not want to think that way*" but that both he and Nora wanted to be "*fair to all the children*".

i. A file note dated 11 August 2008 records a meeting between Mr Potter, Nora and Charles, in which Mr Potter, recording that Nora and Charles were adamant that they wished to treat each of their children equally with their entire estate being divided equally between

their three children on their second death.

j. On 29 October 2008 Nora and Charles executed new mirror Wills. As before, the Wills contained specific bequests of watches and jewellery but neither Will provided for any specific bequest of Wood House to John.

k. On 20 July 2010 Mr Potter met with Nora and Charles. Mr Potter's meeting note states as follows,

> "… having discussed matters at length with their son John and daughter Lisa both of whom work in the family business they now believe it is time to alter them so that their son David can no longer be involved in the business."

In relation to Wood House:

> "This house is owned by Charles and Nora on a beneficial joint tenancy. There was some discussion as to whether or not any tenancy has been drawn in favour of John and Lorraine I indicated that I had not prepared any such tenancy and I was asked to make contact with Jeremy Muntus of Merryweathers to see whether he had prepared one. It was felt that there perhaps ought to be some form of tenancy which would enable agricultural relief to be claimed in part.

l. Following the meeting, Mr Potter drafted new mirror Wills which were sent to Nora and Charles under cover of a letter dated 28 July 2010, asking them to check the Wills carefully. On 5 October 2010 Charles and Nora executed the Wills at a meeting with Mr Potter. The Wills updated the specific bequest with a £1 million gift to David and the residue of the surviving spouse now to be divided equally between John and Lisa. A file note dated 8 October 2010 records that Charles and Nora went through the Wills on a "clause by clause" basis and confirmed their approval.

m. A year later, on 11 October 2011, Peter Caswell, a partner at Taylor Bracewell, met with Nora and Charles regarding their Wills with instructions to update them to include specific bequests of Pond Field House to Lisa. Mirror Wills were executed by Nora and Charles on 18 October 2011 incorporating this change.

n. An internal Taylor Bracewell email dated 17 February 2015 records that Nora had been on the telephone about an amendment to the Wills to make a gift of a grand piano to Lisa. Nora and Charles again executed mirror Wills on 4 March 2015 which included specific

bequests of Pond Field House and the piano to Lisa and £1 million to David and with the residual estate of the survivor to be shared between Lisa and John.

o. Two further undated files notes record Wood House as being owned by Charles and Nora and subject to an occupancy of John and Lorraine.

Kilnhurst

41. In 2006 Nora and Charles purchased a commercial premises at Kilnhurst (the "Kilnhurst Site") as an investment. The Kilnhurst Site was used as a site from which London Wiper Company Ltd ("LWC") carried on business. LWC was a Hughes family business.

42. On 1 April 2010 Nora and Charles as joint landlords entered into a written lease agreement in respect of the Kilnhurst Site with LWC at a rent of £20,000 per annum. Subsequently the rent was raised to £60,000 per annum.

43. Until Nora's death, the rent was credited to the LWC joint directors' loan account. After Nora's death, until the Kilnhust site was sold by the administrators of LWC in 2020, the rent was paid to Charles and, from 1 March 2019, when Charles assigned his beneficial interest in the Kilnhurst Site to John, to John. Charles has caused LWC to make a payment to Lisa of £24,554.80 on account of arrears of rent from the Kilnhurst Site but accepts that a further sum is due.

The Hedgerows

44. In around October 2007 Nora and Charles instructed Mr Potter to act for them in respect of their joint purchase of a property at 6 The Hedgerows ("The Hedgerows"), next door to where John was by then living. Nora and Charles obtained a joint mortgage for £135,000 to purchase the property and became the joint registered proprietors on 16 January 2008. Charles lived at the Hedgerows between 2008 and 2018.

Pond Field House

45. In around 2008 a bungalow at Tilts Farm, where Charles had been living, flooded. Charles and Nora decided to demolish the bungalow and to build a new residential property which became known as Pond Field House. A file note by Mr Potter dated 20 July 2010 records that Nora and

Charles intended to purchase Pond Field House and that Nora would use Pond Field House as her residence. In 2011 Nora moved out of Tilts House into Pond Field House and John moved back to Tilts House.

The 2015 dispute

46. In 2015, LWC and Portbond Ltd ("Portbond"), another family-owned company, were experiencing cash flow difficulties. A meeting was held with the companies' bank, Barclays, following which the companies' accountants Smith Craven carried out an audit of shareholder and director drawings. It was alleged by Charles and John that Lisa had made large unauthorised drawings between 2011 and 2015 and Lisa was removed as director of both companies. Lisa contends that her withdrawals were authorised in line with similar expenditure by other family members and that it was in fact John who had taken large sums of money from the companies.

47. Portbond and LWC brought proceedings against Lisa which were subsequently struck out when those companies entered administration. Lisa has in turn commenced unfair prejudice proceedings against John, Charles and James which are ongoing.

48. On 10 December 2015 a meeting took place at Smith Craven attended by Nora, Charles, Lisa, John and James and Messrs Fitton and Gregory, partners in the firm, to consider their reports. This meeting is referred to by Nora in her Affidavit as an occasion when she made clear that, as a 50% owner, she intended to sell her share in the Edlington properties in order to raise some money. On the basis of Messrs Fitton and Gregory's evidence, I accept that Nora did not say anything openly about her ownership of the properties (although she may well have done so privately to Lisa). The issue of the ownership of the Annex was certainly mentioned. Mr Gregory's note of the meeting records that Lisa described the Annex as belonging to Nora and Charles and that James confirmed that the Annex was "still Nora's and Charles's".

49. Nora executed her final Will on 2 June 2016, removing John, David and Charles as beneficiaries and leaving her entire estate to Lisa alone. Charles initially entered a caveat against a grant of probate on the Will but probate has now been granted and no substantive challenge to the Will has been made by the defendants.

50. On 18 October 2016 Nora served notices of severance on Charles in respect of the Edlington Wood Titles which stated that each title was held by Nora and Charles "as joint tenants in law and equity" and that after the severance each would be held by them as "tenants in common in

equal shares". Charles (who had retained his current solicitors to act for him by this stage) signed and returned these notices to Nora and in turn asked Nora to sign a notice of severance in similar terms in relation to Pond Field House, which she did. No suggestion was made at this point by Charles or his legal representatives that the notice was of no effect because Nora no longer held any beneficial title in Edlington Wood that was capable of being severed

51. On 12 June 2017 Prodicus Legal, acting on behalf of Nora, sent letters to each of Lorraine, Jodie and James demanding vacant possession of Wood House by 11 July 2017 and claiming damages for trespass since 2011 in the sum of £594,000 from each of Lorraine and Jodie and £248,400 from James. By letters dated 15 August 2017 they purported to terminate any licences that had been granted to occupy Wood House with effect from 23 October 2017.

52. Ansons, acting on behalf of Charles, John, Lorraine, James and Jodie responded by a letter dated 16 August 2017 ("the Ansons letter"). This was the first occasion on which John and Lorraine asserted a claim to beneficial ownership of Wood House. After expressing surprise at the fact that a letter of demand had been sent to Jodie, who is severely autistic, the letter went on to set out an account of the background facts. The letter stated that this account had been approved by Charles, John and Lorraine. It alleged that, following discussions, an agreement had been made in 1984 between Nora, Charles, John and Lorraine, at a time when the then owner of Wood House was looking to sell, that the property would be purchased for the benefit of John and Lorraine, though in Charles and Nora's names, that John and Lorraine would move into the property and fund its complete renovation and that the property would pass into John's name on Charles's death. The letter went on to say that until recently there had been no suggestion that John and Lorraine had no interest in the property and that, when the subject came up, Charles would always confirm that the property would be "willed" to John by his parents. John and Lorraine were said to have spent "huge amounts of time, effort and some money" renovating the Property and had made their own property available to Nora and Charles rent free because they understood that Wood House was effectively theirs and would ultimately be put in John's name.

53. On the same day (16 August 2017) Charles and John executed a deed under which Charles assigned such beneficial interest as Charles held in both Edlington Wood Titles to John.

54. Shortly after Nora's death on 25 October 2017, Charles moved into Pond Field House and had the locks changed. He is still living there.

55. The present proceedings were issued on 21 February 2019.

The Claims and Counterclaims

56. The claims which were still live by the time of the trial were as follows:

    a. Lisa's claim for a declaration as to her 50% beneficial interest in each of the Edlington Wood Titles;

    b. John and Lorraine's competing claims for a declaration as to their beneficial ownership of Wood House (including the Annex) and the 25 acres;

    c. Lisa's claim for rent or mesne profits in relation to Lorraine's and James's occupation of Wood House and the Annex;

    d. Lisa's claim against Charles for an order for sale of and/or occupation rent in respect of Pond Field House;

    e. Lisa's claim against Charles for an equitable account in relation to the rents received from the Kilnhurst Site;

    f. Charles's claim for a declaration that he is entitled to occupy Pond Field House without payment of rent or other charges for life or for so long as he wishes;

    g. Charles's claim for the return by Lisa of various chattels alternatively damages for conversion.

Wood House and the 25 acres

57. John and Lorraine's case at the trial was, in summary, as follows:

    a. In 1983 or 1984 (the precise date is unclear and is not material) Charles and Nora orally agreed with, or represented to, John and Lorraine that Wood House and the 25 acres were their (i.e. John and Lorraine's) property.

    b. In reliance on this agreement or representation, John and Lorraine acted to their detriment by (amongst other things) moving with their child out of their home at Tilts Farm which they allowed Charles and Nora to occupy rent-free, living in a caravan at Edlington Wood for about twelve months, and undertaking the renovation and maintenance of Wood House which were funded by John.

    c. Accordingly, John and Lorraine acquired beneficial ownership of Wood House and the 25

acres by 1985 when the first phase of work was complete pursuant to a common intention constructive trust.

d. Alternatively, if the Court takes the view that the understanding was that John and Lorraine were to acquire beneficial ownership of Wood House and the 25 acres upon the death of Charles and Nora, a proprietary estoppel-based interest has arisen such that it would be unconscionable for Nora's estate to resile from that understanding.

58. Lisa's claim for a declaration as to the 50% beneficial interest in each of the two Edlington Wood Titles (including Wood House and the 25 acres) is based on the following propositions.

a. Nora and Charles purchased the two titles as joint tenants in law and became the legal owners. They continued to hold the property as joint tenants in law until Nora's death. Upon Nora's death, pursuant to the right of survivorship, legal title to the property passed into the sole name of Charles. Legal title to the property remains held by Charles to this day.

b. Equity follows the law. From the time of the purchase until on 18 October 2016 when Nora served written notices on Charles severing the joint tenancy in equity, pursuant to s.36(2) of the Law of Property Act 1925, Nora and Charles held legal title to the property jointly on trust for themselves thereafter as tenants in common in equal shares.

c. Upon Nora's death on 25 October 2017, the 50% equitable share in the property held by Nora devolved to Lisa as Nora's personal representative under Nora's will: s.1(1) Administration of Estates Act 1925. Therefore, since Nora's death, Charles has held the property as sole legal owner on trust for John and Lisa in equal shares.

Legal principles

59. There was no dispute between the parties as to the legal principles applicable to a common intention constructive trust and to proprietary estoppel.

60. There are close parallels between the two doctrines. In *Yaxley v Gotts* [2000] Ch 162 Robert Walker L.J. (as he then was) held as follows:

"At a high level of generality, there is much common ground between the doctrines of proprietary estoppel and the constructive trust, just as there is between proprietary estoppel and part performance. All are concerned with equity's intervention to provide relief against unconscionable conduct, whether as between neighbouring landowners, or vendor and purchaser, or relatives who make informal arrangements for sharing a home, or a fiduciary and

the beneficiary or client to whom he owes a fiduciary obligation." (page 176 B – D)

….

"To recapitulate briefly: the species of constructive trust based on "common intention" is established by what Lord Bridge in *Lloyds Bank Plc. v. Rosset* [1991] 1 A.C. 107, 132, called an "agreement, arrangement or understanding" actually reached between the parties, and relied on and acted on by the claimant. A constructive trust of that sort is closely akin to, if not indistinguishable from, proprietary estoppel. Equity enforces it because it would be unconscionable for the other party to disregard the claimant's rights. Section 2(5) expressly saves the creation and operation of a constructive trust." (page 180 B – D)

61. Subsequently, in *Stack v Dowden* [2007] 2 A.C. 423, Lord Walker expressed the view that the two doctrines are not, however, to be completely assimilated:

"Proprietary estoppel typically consists of asserting an equitable claim against the conscience of the "true" owner. The claim is a "mere equity". It is to be satisfied by the minimum award necessary to do justice (*Crabb v Arun District Council* [1976] Ch 179 at 198), which may sometimes lead to no more than a monetary award. A "common intention" constructive trust, by contrast, is identifying the true beneficial owner or owners, and the size of their beneficial interests."

62. The facts needed to establish a constructive trust and those necessary for a proprietary estoppel are closely analogous. In order to succeed with a constructive trust claim, a claimant must demonstrate, first, a common intention with the legal owner that he or she should have a beneficial interest in the property, the common intention to be established by evidence of an express agreement or to be inferred from the parties' conduct. Second, the claimant must show that he or she acted to his or her detriment on the basis of that common intention; such that it would be inequitable for the legal owner to deny the claimant's interest; see *Grant v Edwards* [1986] Ch 638 at 654.

63. In *Lloyds Bank plc v Rosset* [1991] 1 A.C. 107 Lord Bridge, with whom the other members of the House of Lords agreed, addressed the facts which may lead to a finding of a common intention that the legal proprietor of a dwelling house holds it on constructive trust:

"The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting

a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.

In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do." (page 132 E – 133 B)

64. Lord Bridge's doubt as to whether anything less than financial contributions will justify a finding of a common intention has been criticised in more recent authorities, notably *Stack v Dowden* [2007] 2 A.C. 432 in which Lord Walker expressed the view that the law had moved on. Baroness Hale commented that many factors other than financial contributions may be relevant to divining the parties' true intention.

65. The facts needed to establish proprietary estoppel were summarised by Lord Walker in *Thorner v Major* [2009] 1 WLR 776. He held that, while there is no single comprehensive definition of proprietary estoppel:

"29. … most scholars agree that the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the claimant, reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance".

66. In *Davies v Davies* [2016] EWCA Civ 463, [2016] 2 P. & C.R. 10 Lewison LJ set out the following propositions summarising the elements of proprietary estoppel:

"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 actuallyhappened, it would be unconscionable for a promise not to be kept either wholly or in part: *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776 at [57] and [101].

ii) The ingredients necessary to raise an equity 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 [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; [2010] 1 All ER 988 at [37].

iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: *Gillett v Holt* at 232; *Henry v Henry* at [38].

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 theperson who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: *Gillett v Holt* at 232.

vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: *Jennings v Rice* [2002] EWCA Civ 159; [2003] 1 P & CR 8 at [56].

vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance: *Henry v Henry* at [51] and [53].

viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: *Jennings v Rice* at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: *Jennings v Rice* at [50] and [51].

ix) In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: *Jennings v Rice* at [51]. However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a "portable palm tree": *Taylor v Dickens* [1998] 1 FLR 806 (a decision criticised for other reasons in *Gillett v Holt*)."

The alleged 1984 Agreement

67. At the heart of John and Lorraine's claim to beneficial ownership of Wood House and the 25 acres, whether by way of constructive trust or proprietary estoppel, is the contention that an oral agreement was made with them, or an oral representation made to them, by Charles and Nora in 1983 or 1984, as to their ownership of Wood House and the 25 acres ("the alleged 1984 Agreement").

68. John's account of the alleged 1984 Agreement in his witness statement was as follows:

28. "[Charles] suggested to me that Lorraine and I could renovate Edlington Wood House and move into it once it was done. He said that if we did that it would be ours to keep. He said he and Mum could live at my house, Tilts House, and that would allow them to sell the Firs and use those funds towards the purchase price.

29. I thought it sounded like a good idea so I told Lorraine about it and took her to see Edlington Wood House. I told her what Dad had said about the house being given to us if we let them live at Tilts House. She told me she was happy to go along with it if I was.

30. Not long after that, Mum and Dad came to our house, and the 4 of us sat in our lounge and discussed the proposal. That was in late 1983 or early 1984. Dad explained to Mum and Lorraine what he had proposed to me about how they could purchase Edlington Wood and the House, so that we could carry on burning cable on the land, and Lorraine and I could live in the house and do it up. Mum said she certainly didn't want to live at Edlington Woods, but she was happy to move into our house (Tilts House) as Dad explained that's what they would need to do so they could sell The Firs. Lorraine and I confirmed to Mum and Dad that we were prepared to move out of our home to allow that to happen and so they could live there. Whilst we had put some considerable effort into the construction of Tilts House, and Lorraine and I both really loved it, we were still young and I felt this was a great opportunity for us that couldn't be missed. We told Mum and Dad we would undertake the restoration of Edlington Wood House and move there. This was agreed on the following basis:

a. The properties at Edlington Wood would be purchased by Mum and Dad in their names, and they would provide the proceeds of sale of The Firs to fund this. Dad would also exchange his land at Root to make up the initial purchase price of the house and 25 acres.

b. Lorraine and I would move out of Tilts House so Mum and Dad could move into it directly from the Firs without having to move anywhere else and they could live in it rent free for as long as they liked, possibly the rest of their lives if necessary (it didn't matter to us because we would have the new house). Lorraine and I would continue to pay the mortgage on Tilts House out of our own monies

c. Lorraine and I would renovate Edlington Wood House however we wished and we would live there and treat it as our own.

d. Legal title to Edlington House and the 25 acres would pass into my name after both Mum and dad had died. It was understood that this did not include the rest of the agricultural land and woodland at Edlington Wood.

69. Lorraine's witness statement contained the following account of the same meeting:

"11. In around 1983 or 1984, soon after John and I had gone to look at Edlington Wood House, Nora, Charles, John and I had a family meeting in the lounge of my then house (Tilts Farm House) over cups of coffee. It was suggested that Edlington House and the 25 acres could be purchased and that John and I could live there and renovate it. Nora stated there was no way she would be moving up to Edlington Wood. I can specifically recall her saying "I don't want to live in the wilderness." Charles explained that if John and I were prepared to carry out the work and live on the site, the property would eventually be "willed" to John after Nora and he had passed away.

12. Charles and John explained that in order to raise the funds for the purchase, Nora and Charles would need to sell their property. It was suggested that they could do this if they could

move into Tilts Farm House, my family and I would have to move out.

13. At that meeting we all agreed that John and I would move out of the Tilts Farm House so that Charles and Nora could live there. John and I would move to Edlington Wood House and renovate the property. We were told by Charles and Nora that it would be ours to live in forever and would pass to John after Charles and Nora died.

14. I was happy with that agreement. I accepted the promise Nora and Charles had made, and I trusted John, and I know John trusted his Mum and Dad."

70. Charles's witness statement confirmed John's account of the alleged 1984 Agreement. In addition, in the course of his cross-examination Charles gave the following evidence about a further discussion with John that was not prefigured in his witness statement:

"Q I asked you why you bought the property and you said it was good value and there were things that could be done with the land. The property wasn't bought for Johnny was it?
A No, it was bought for us but we decided after he could have it. Me and Nora decided he could have it
…

Q Is the position in fact that this was an asset that you and Nora bought as an investment that you let John and Lorraine use but which was always yours Mr Hughes
A No, I promised it to Johnny. We were horse dealers and if we shake a hand that is a deal
Q When you promised it to Johnny you say there was a conversation, a discussion about what was going to happen. Where?
A I think we was going to Newcastle. We had another yard. We was driving along and we were talking
Q Who was in the car?
A Johnny and me
Q what did you say to Johnny?
A I said 'did you want to have Edlington with 25 acres?'
Q Where did '25' come from
A We kept horses up there so he needed somewhere to keep his horses
Q So there is a conversation in the car between you and Johnny, but Nora wasn't there.
A No
Q It was Nora's property as well
A We agreed with each other, we do agree
Q Did you ever speak to Nora about what you had just decided with Johnny?
A Yes
Q When?
A Before, a week before or something
Q Where?
A At Tilt's
Q Tell us about that.
A I said 'Do you want to move up there'? 'I wouldn't move up there' she said, 'it was too scary'. I said 'would you mind if Johnny move up there' and she said 'no he can have it with pleasure'
Q Just the 2 of you

A Yes
Q A week before the drive to Newcastle you ask her and she says that is fine.
A Yes
Q Did you mention that to the solicitor who took your witness statement?
A Did I?
Q This is a legal case Mr Hughes.
A I give my word, my word is my bond and that is the end of it."

71. Nora denied that there was ever any agreement made or assurance given as to John and Lorraine's ownership of Wood House. Her Affidavit contained the following:

"39. …After Charles and I had purchased Edlington in 1986 I agreed to move into Tilts House and Lorraine and Johnny moved into a caravan at Edlington but it needed renovating. At that time Lorraine was pregnant with her daughter Jodie and had a young son called John Hughes.

49. … As set out above, originally Johnny and his wife Lorraine lived in a caravan at Edlington. They lived in a caravan whilst the renovation works were under taken. I have been asked to say why I agreed to this arrangement. I must make it clear that the male members of the Hughes family tended to dominate at the material times. The reality is that my estranged husband Charles and my son Johnny agreed between themselves that it would be a good idea for Johnny to live at Edlington whilst the renovation works were being completed. I was not properly consulted.

50. I understand that Johnny says that it was intended that Charles and I would give Edlington to him. This is not true and does not fit with the facts.

51. Once I found out that Johnny was planning to move to Edlington I discussed it with him, Lorraine and Charles. I think this must have been at the time he was arranging for the caravan to be delivered to site. It was obvious to me that there had been discussions between Johnny and his father. Charles and I had not been party to them. In any event I said to them all that I was not happy that I had been excluded from the discussions but I was prepared to give my permission as an owner of Edlington for Lorraine and Johnny to live there provided they would leave if I wanted to move in or if I wanted to sell Edlington. This was agreed."

72. None of the witnesses claimed that David or Lisa was present at the meeting when the alleged 1984 Agreement was made. David's evidence was that there was a subsequent meeting at Wood House, before the renovation works started, at which Nora made clear that she did not want to move to Wood House although she said that she had it in mind that she might move to Wood House once the work was done. Lisa's evidence was that there was a family meeting at Wood House after the renovation work had started at which John said that he and Lorraine would move back into Tilts House once the works were finished. Lisa's evidence was that Nora never mentioned the alleged 1984 agreement and, on the contrary, said many times over the years that John and his family had no right to be at Wood House and that, if she moved to Wood House herself or if she and Charles decided to sell the property then John and Lorraine would have to move out.

73. As indicated earlier in this judgment, the credibility of the witnesses' evidence must be assessed in the context of the whole evidentiary picture, taking into account the objective facts and documents and the overall probabilities.

74. It was submitted on behalf of the defendants that I should accept their case as to the alleged 1984 Agreement for the following main reasons:

a. John, Lorraine and Charles were all clear that it was agreed and understood at the meeting at Tilts House in 1983/1984 that: John and Lorraine would vacate their newly built home at Tilts, move to Wood House and renovate it, and Wood House and the 25 acres would be theirs. There is no obvious reason why Charles would support John and Lorraine's case as to the alleged 1984 Agreement if it was not true. Charles consistently stated in the course of his oral evidence that he had, with the agreement of Nora, given Wood House and the 25 acres to John and plainly regarded the arrangement as a done deal, which had been shaken on and which could not be resiled from.

b. It is inherently credible that the parties would have entered into the alleged 1984 Agreement as a means of addressing the housing needs of the parties involved. Charles and Nora needed somewhere to live after selling The Firs. It was common ground between the parties that Wood House, which was in an isolated location and in a dilapidated condition at the time of purchase, was not a suitable home for Nora and that she never wanted to live there. By vacating Tilts House and living in a caravan pending renovations to Wood House, John and Lorraine enabled Charles and Nora to live at Tilts House where they made their home. Nora's suggestion in her Affidavit that she was not consulted about John and Lorraine's move into Wood House, without which she could not have moved into Tilts House, is untenable.

c. The understanding that Wood House was to be John and Lorraine's permanent home is consistent with the fact that Wood House was renovated to create a substantial family home, built to their exact specifications and theirs alone. Lisa's witness statement expressly accepted John had "complete control over all the renovation works….and made decisions about how much money would be spent and on what…". Nora makes no reference to having any involvement in the renovations or authorisation of them

d. There was no other credible reason for John and Lorraine's decision to give up what was their newly constructed family home at Tilts, a property which they were still paying for, to occupy a caravan with a small child, and start all over again at Wood House

with a renovation project, the first phase of which took 18 months. As Lorraine stated (in response to the suggestion that Nora had always made it clear that she and her family would have to move out if and when asked to do so):

> "I can tell you now categorically, if my mother or I had been told there is no way I would have left my beautiful home to have Little John and another child and another child for someone to take it away."

e. Charles, John and Lorraine's accounts of the alleged 1984 Agreement are also entirely consistent with the uninterrupted occupation of Wood House by John and Lorraine for over 30 years, the move by Lorraine's parents to the Annex and John and Lorraine's encouragement of James' spending on the Annex.

75. It was submitted on behalf of Lisa that I should reject the defendants' case as to the alleged 1984 Agreement, for the following reasons, amongst others:

a. There is not a single document which records or evidences the alleged 1984 Agreement. The alleged 1984 Agreement was first asserted in 2017 in the Ansons letter. There is no plausible explanation for the failure to have documented or to have asserted it for over thirty years.

b. The defendants failed to provide proper particulars of the words used at the meeting when the alleged 1984 Agreement was supposedly made. The defendants have, instead, simply repeatedly stated what they say they understood to be the legal effect of the agreement. The account in John's witness statement reads like a legal pleading and the words said to have been used by Nora at the meeting have never been clearly identified.

c. The account of the alleged 1984 Agreement put forward in the Ansons Letter, the Amended Defence and Counterclaim and the defendants' witness statements, according to which the Edlington Wood Titles "*would be purchased*" by Charles and Nora in their joint names on behalf of John and Lorraine, presupposes that Charles and Nora had not already committed to the purchase whereas in fact they had exchanged contracts some two years previously.

d. John and Lorraine's evidence was inconsistent and unclear as to what they say their rights were once the alleged 1984 Agreement had been reached, in particular as to whether they understood themselves to have become the owners of Wood House and the 25 acres as soon as the 1984 Meeting had taken place, or at some later stage, upon the death of John's parents and whether Lorraine was gifted the property personally or as John's wife.

e. The claim to the 25 acres is particularly implausible, given that it was not mentioned in the Ansons letter and its boundaries have never been clearly established.

f. No good explanation has been offered as to why legal title was initially conveyed into the names of Nora and Charles and then at all times retained by them if it was the parties' intention that John/Lorraine would be the true owners.

g. It is implausible that Charles and Nora would have gifted Wood House to John and Lorraine, having already gifted them Tilts House.

h. Charles and Nora's Wills demonstrate that there was never any intention that John and Lorraine were to be given Wood House.

i. The fact that Nora and Charles provided the Edlington Wood Titles as security in support of guarantees given on behalf of the family businesses on a number of occasions is inconsistent with the alleged 1984 Agreement.

The terms of the alleged 1984 Agreement

76. The defendants' response to Lisa's case as to the lack of particularisation of the terms of the alleged 1984 Agreement and the inconsistencies in the defendants' case as to what precisely was agreed was that it is in the nature of constructive trust and proprietary estoppel cases that they are often founded upon "*imperfectly remembered*" recollections of oral agreements expressed in "*imprecise*" terms (*Lloyds Bank v Rosset* per Lord Bridge at 132 F-G) and formulated in a family or social context where such promises are often subject to "*unspoken and ill-defined qualifications*" and require careful consideration of the context and surrounding circumstances, as noted in *Thorner v Major* by Lord Walker (paragraphs [56] - [57]) and Lord Neuberger (paragraphs [84] – [86]) cautioning against an overly rigorous approach to assessing the terms of promises and assurances.

77. I accept that an overly rigorous approach to the terms of the alleged agreement or as to what was said at the meeting alleged to have taken place in 1983 or 1984 would be inappropriate. I do not consider that there was an undue lack of particularisation in the defendants' case as to what was said at the meeting which they rely on. I would be prepared to regard the way in which the defendants' case as to the alleged 1984 agreement was formulated in the Ansons letter, the Amended Defence and witness statements, which implied that no decision had yet been taken by Charles and Nora to purchase the Edlington Wood titles, whereas in fact contracts had been exchanged some two years previously, as attributable to imperfect recollection of an

informal discussion. Nor would it matter that the agreement was made post acquisition. As was acknowledged by Lord Bridge in *Lloyds Bank v Rosset*, the agreement, arrangement or understanding may be made prior to acquisition *"or exceptionally at some later date"*.

78. I would likewise not have regarded the inconsistencies in the defendants' case as to whether what was agreed was that beneficial ownership to Wood House would be acquired immediately or by way of a bequest by Charles and Nora, or to John alone or to John and Lorraine, as fatal to their case, had I been otherwise persuaded that it was made clear that John (either alone or with Lorraine) was to acquire beneficial ownership of Wood House. I would have considered that these inconsistencies were attributable to the witnesses' imperfect recollection of an informal discussion.

79. The inconsistencies in the defendants' case with regard to the alleged agreement or representation regarding the 25 acres is, in my view, more difficult to explain away as attributable to imperfect recollection. No mention was made of the 25 acres in the Ansons letter, despite the obvious importance of an agreement or representation on this point, and its memorable nature, had it been made. The Defence and Counterclaim, as originally pleaded asserted an agreement that Edlington Wood would be purchased in two stages, the first comprising Wood House "*and about 25 acres*" and that "*the business use of the Land at Edlington Wood would continue on the first 25 acres*". Subsequently, nothing was said in the defendants' witness statements about the intended business use of the 25 acres. In response to a Request for Further Information made by Lisa, the defendants produced for the first time a newly drawn map showing the boundaries of the 25 acres claimed. During cross-examination, Charles gave an account of the 25 acres being physically staked out by contractors and said that the work was only partially completed. John said that his father was confused regarding this and told the Court that a man did come to stake out the area but that the 25 acres was already fenced, and that the fences were removed when they were burnt during the miners' strike. This account of the staking out and fencing of the 25 acres did not feature in either John's or Charles's witness statements. Counsel for the defendants referred to an area of cleared grassland referred to in a grassland Management Plan produced by Merryweathers and appearing on the OS map as parcel number 7010 but this parcel was not the same as the area of 25 acres shown on the defendants' map.

80. Given these inconsistencies, even if I had been satisfied that an agreement or representation was made by Nora and Charles to John and Lorraine concerning the latters' ownership of Wood

House, I would have concluded that the claim to the 25 acres was an attempt to claim ownership of the parts of the site that John wished to have rather than anything that was ever promised to him.

Failure to record or assert the alleged 1984 Agreement

81. The defendants contended that the failure to record in writing and the failure to assert the alleged 1984 Agreement for over 30 years were unsurprising given that the agreement was one reached between family members based on trust. The Hughes family business has been built in the rag trade and scrap metal which operated on the basis of one's word and a handshake. Charles stated repeatedly in the course of his evidence that he was a man of his word who considered himself bound by an oral agreement without the need for formal documentation:

> "Q When decided to give Edlington Wood House and the 25 acres to john did you tell Mr Potter?
> A I can't remember when we give our word our word is our bond. I told him he could have it and he knew what I was like.
> …
> Q The reason you don't tell Mr Potter to draw up legal documents is because there wasn't an agreement you didn't give it to johnnie that is the reason
> A I give it to him, I give my word. My word is everything
> Q Is it you said to Johnnie that you hoped he might one day have it
> A No he would have it
> Q There wasn't a contract
> A He didn't need a contract Johnnie knows his dad, if I've promised anything
> Q Nora says this didn't happened
> A She was getting older and in frail health. She got very fretful.
> Q She wrote a long statement saying it didn't happen repeatedly saying didn't happen
> A I tell you it did happen
> Q If you didn't give Johnnie a legal document he had no protection
> A He got my word
> Q We wouldn't be here if given him a legal document
> A If I give my word. it is my word. Ask anybody in the trade"

82. It was submitted that John's dyslexia was a further factor making it unsurprising he would see no need for such an arrangement to be reduced to writing and that it was apparent from John and Lorraine's evidence that neither of them thought in those terms when it came to dealings within the family.

83. The defendants' explanations for the failure to record or assert the alleged 1984 Agreement

were, in my judgment, unconvincing. Given the significance of the alleged agreement, affecting as it did, the ownership of the most substantial asset held by Nora and Charles and the home of John and his family, it was to be expected that there would be a record of it, albeit an informal one. It is, in my judgment, simply not credible that John and Lorraine would have left the issue of documentation of their ownership rights in abeyance for over 30 years. Even if nothing had been committed to writing at the outset in 1984, I would have expected John and Lorraine to have appreciated the need to ensure that their rights of ownership were documented after those rights were questioned by Lisa in 2002. Documenting the agreement would have been inexpensive and easy to do at any time. John and Lorraine accept that they never asked for legal steps to be taken or sought advice.

84. The fact that the alleged 1984 Agreement was not only undocumented but also not mentioned to anyone, casts further doubt on the defendants' case. John accepted that he did not tell his siblings or anyone else about it at the time. I reject Charles's suggestion in cross-examination that Lisa was told about it. Lisa and David did not know about the alleged 1984 Agreement until the Ansons letter. There is, in my view, no credible reason why Lisa and David would not have been told by any of Nora, Charles, John or Lorraine about the alleged agreement which significantly affected their interests as family members, had it been made. Although Charles suggested that Mr Butler and Mr Potter were told about the alleged agreement, the documentary evidence shows otherwise. It is clear that they were not told. Again, the failure to mention the alleged agreement to the professional advisers suggests that it was never made.

85. It was submitted on behalf of the defendants that it is a common feature of constructive trust and proprietary estoppel cases that the agreement on which the claim is based is oral and undocumented and that disputes commonly arise when the party with legal title steps back from an oral agreement, understanding or promise made many years previously. I accept this as a general proposition but the inferences to be drawn from a failure to record or assert an oral agreement obviously depend on the particular factual context. As was submitted by Counsel for Lisa, in the case of an agreement made between two cohabiting partners in a romantic relationship, who may never have thought of seeking legal advice relating to the property they both occupy, a failure to document an oral agreement or representation may well not cast doubt on the fact that the agreement or representation was made. The context of this case was different. The Hughes family were business people who dealt with properties frequently. Nora and Charles gave extensive, explicit consideration to their testamentary intentions, made adjustments to their

wills where needed, and formally transferred their interests in their properties over the years when they intended to do so. The idea that an agreement such as the alleged 1984 Agreement would never have been recorded by the parties within any form of document over the years is inconsistent with the overall evidential picture. In my judgment, the reason that there are no documents evidencing the existence of the alleged 1984 Agreement is that there was no such agreement.

The Wills documentation

86. The defendants' case as to the alleged 1984 Agreement is not only unsupported by documentary evidence but is contradicted by the documents in the Taylor Bracewell file.

87. As set out earlier in this judgment, between 1998 and early 2015 Charles and Nora each signed five Wills (in 1998, 2008, 2010, 2011 and 2015). The Wills were sent to Charles and Nora in draft, revised, amended, checked, and signed. One file note refers to the Wills being gone through with Nora and Charles "clause by clause". The Wills and the other documents show the following:

    a. The Edlington Wood Titles (including Wood House) were consistently treated as the property of Nora and Charles, subject to the occupancy of John and Lorraine.

    b. The Wills included specific legacies, including the bequest of Pond Field House to Lisa, but never any specific bequest of Wood House.

    c. Mr Potter raised the ownership of Wood House in 2008 with Nora and Charles and was told that there was no intention that John should inherit the property and that it should form part of their composite estate.

    d. There was at no stage any mention of the alleged 1984 Agreement.

    e. Mr Potter and Mr Butler did not consider John/Lorraine to be the true beneficial owners of Wood House and were not instructed to put any arrangements into place to ensure that John/Lorraine would become the owners of the property.

88. It is particularly striking that John failed to raise the issue of the inheritance of Wood House in 2008 despite the fact that (according to Mr Butler's email of 16 July 2008) he was pressing for the Wills to be finalised at that time. Again in 2010 Nora and Charles discussed "at length" the alteration of the Wills with John and Lisa concerning problems with David (according to Mr

Potter's file note dated 20 July 2010) but again John appears not to have mentioned Wood House. There is no convincing explanation for John's failure to ensure that the Wills reflected the agreement that he claims he had made with his parents that Wood House would be "willed" to him.

89. Although Mr Potters' note of the meeting with Mr Butler dated 9 July 2008 noted that John "*has improved the house substantially to the tune of £100,000 and on this basis must have an interest in the property*" the possibility that John had acquired an interest in Wood House was not linked to any agreement with Charles and Nora and was never mentioned again.

90. In my judgment, the documents in the Taylor Bracewell file are strong evidence that it was never agreed or represented that beneficial ownership of Wood House belonged to John or to John and Lorraine or that it would be bequeathed to them.

91. Counsel for the defendants submitted that it was a not uncommon feature of constructive trust and proprietary estoppel cases that a promise as to future inheritance was shown to be inconsistent with a subsequent Will. Reference was made to the facts of *Gillet v Holt* [2001] Ch 201 and *Davies v Davies* [2016] EWCA Civ 463; [2016] P & C.R.10. The facts of those cases were, however, very different from the facts of this one. In neither of those cases was there a sequence of Wills made over a period of seventeen years which were consistently at odds with an alleged earlier promise.

92. Counsel for the defendants sought to explain the inconsistency between the Wills and what was allegedly promised to John and Lorraine on the basis that by 1998, the date of the earliest Wills, John had been out of occupation of Wood House for some three years and the strength of John and Lorraine's legal and moral claims in relation to Wood House was less keenly appreciated. Even if Nora and Charles had by this stage forgotten or chose to ignore an agreement with John and Lorraine, which is itself inherently unlikely in my judgment, the passage of time does not explain why John failed to ensure that his and his family's interests were protected by appropriate provision in Charles and Nora's Wills.

The family's housing needs

93. The defendants' argument that the 1984 Agreement is inherently credible as a means of addressing the housing needs of the parties involved is not persuasive. I consider that, on the contrary, the alleged 1984 Agreement made little sense in the context of the parties' housing

needs.

94. I accept that, in view of the fact that Nora did not want to live at Wood House and that Nora and Charles had nowhere else to live following the sale of The Firs, it is understandable that the parties should have agreed that Charles and Nora would live at Tilts House and that John and Lorraine would vacate Tilts House, renovate Wood House and occupy it as their home. This arrangement did not, however, require ownership of Wood House to pass to John. I accept Lisa's submission that no good explanation has been offered as to why legal title was initially conveyed into the names of Nora and Charles and then at all times retained by them if it was the parties' intention that John/Lorraine would be the true owners.

95. Furthermore, the agreement that John and Lorraine were to be the beneficial owners of Wood House would mean that they would be the owners of both Wood House and Tilts House. I reject John's case that he had been required by Nora to pay for the land at Tilts House (paragraph above). The effect of the alleged 1984 Agreement, if made, would therefore have been that Nora and Charles had gifted not one but two properties to John and Lorraine. Such preferential treatment vis a vis John's siblings whom Nora and Charles wished to treat equally, as they told Mr Potter, is implausible.

96. I do not accept the defendants' contention that the Agreement is the only credible way of making sense of John and Lorraine's decision to move out of Tilts House and into the caravan at Wood House. As set out below in relation to the defendants' case on detriment, the move, and the expenditure incurred at Wood House, are understandable on the basis that, once the renovation work was complete, John and Lorraine would be entitled to occupy rent-free a property that was substantially larger and more imposing than Tilts House. The fact that Wood House was built to John and Lorraine's specifications, the fact that they had complete control over all the renovation work, the fact that (as set out below) John incurred expenditure in renovating the property and the fact that John and Lorraine occupied the property for thirty years are not inconsistent with this arrangement and, viewed in the context of the evidence as a whole, these elements of the arrangement are, in my judgment, not strong indicators that John and Lorraine had acquired or were to acquire beneficial ownership of Wood House.

The Newcastle car trip

97. I do not consider that Charles's evidence about the conversation with John during a car journey

was a reliable recollection, given that it was not mentioned in the Ansons Letter, the Amended Defence & Counterclaim or either of Charles or John's witness statements despite its obvious materiality to the counterclaim and given its inconsistency with the evidence of Charles's intentions as they appear from the documents in the Taylor Bracewell file. Even if the conversation took place, I do not believe that Nora was ever told about it.

Inconsistent documents

98. The charges over the Edlington Wood Titles, the draft agricultural tenancy agreements and Charles's notice of severance in relation to the Titles were all prepared on the basis that Charles and Nora owned the Titles as legal and beneficial owners and that John and Lorraine had no beneficial interest in them.

Charles's support for John and Lorraine's claim

99. It was submitted on behalf of the defendants that Charles's support of John/Lorraine's claim to Wood House and the 25 acres, against his own interests, is evidence of the validity of the claim. This submission is not compelling. It is not against Charles's own interests to support John and Lorraine's claim since it is to be inferred that Charles wishes to increase the quantity of assets he is able to transfer to (or to bequeath to) John, to whom he is close.

Conclusion as to the alleged 1984 Agreement

100. In summary, taking into account the entirety of the evidentiary picture referred to above, I am not satisfied that any agreement, arrangement or understanding was ever made between Nora and Charles and John and Lorraine as to the passing of the beneficial ownership of Wood House and the 25 acres to John or to John and Lorraine or that any representation or assurance was ever given by Nora and Charles with regard to the bequeathing of the property to John or to John and Lorraine. I accept that there must have been some agreement or understanding between Nora, Charles, John and Lorraine that John and Lorraine would move out of Tilts House, renovate Wood House and occupy it and that Charles and Nora would occupy Tilts House, because that is what happened. But that did not entail any agreement or representation as to a transfer of the ownership of Wood House and the 25 acres.

101. Even if, contrary to my findings, Charles told John at any stage that Wood House would be his, such a representation was not made with the knowledge or authority of Nora and was therefore not binding on her; see *Habberfield v Habberfield* [2018] EWHC 317 per HHJ Birss at [50] and [51], citing *Fielden v Christen Miller* [2015] EWHC 87 (Ch). per Sir William Blackburne. Whatever Charles may have told John, it is clear to me on the evidence that Nora, who "ruled the roost", never agreed that John and Lorraine would become the owners of Wood House and that she always made this abundantly clear to members of her family. John and Lorraine may have hoped that they would one day acquire Wood House and the 25 acres but the fact that they did not take steps to ensure that the property was transferred or that the Wills provided for the property to be left to them suggests that they knew full well that Nora would never agree to this.

Detriment

102. In view of my conclusion that there was no agreement made or assurance concerning John and Lorraine's ownership of Wood House and the 25 acres, the issue as to whether they relied on this agreement or assurance to their detriment, falls away. I propose nevertheless to address the evidence of detriment since it was submitted on behalf of the defendants that the subsequent conduct of the parties in acting to their detriment supported their case as to the existence of the agreement and understanding with Charles and Nora: the agreement and understanding was said to be the only possible explanation for their willingness to subject themselves to the detriment which they have suffered.

103. John and Lorraine alleged that they suffered both financial and non-financial detriment. The financial detriment was alleged to be as follows:

a. the funding of the initial phase of works at Wood House through John's remuneration and benefits from JLD and funds from other sources;
b. the funding of further works, in about 2003 by way of a mortgage on Tilts House in the sum of c. £100,000; and
c. the funding of further works in 2011 from the profits of LWC, the shareholding of which was held by Charles and Nora, but which was run for the benefit of all participating family members.

104. It was submitted on behalf of Lisa that John and Lorraine had failed to prove any expenditure by them on Wood House and that, if they had spent any of their own money on Wood House and the

25 acres, this was simply for the benefit of their own use and enjoyment during their lengthy rent-free occupation of the property.

The initial works

105. It was common ground that the initial works were largely paid for by JLD, in which John was a 50% shareholder. It was alleged on behalf of the defendants for the first time at the trial that payments for works was discharged by JLD, allocated to a director's loan account and written off by JLD declaring a dividend although there was no documentary support to evidence this accounting treatment.

106. Lisa suggested in cross examination that JLD's payments for the initial renovations, like the payment of the mortgage used to fund purchase of the Edlington Wood Titles, were by way of deferred consideration payable for the transfer by Nora and Charles of the business at Black Bank but as already noted, Lisa's evidence was not supported by any documents and was inconsistent with the basis on which Nora and Charles had been compensated for the extinction of the Black Bank business.

107. Despite the absence of documentary evidence to support John's explanation for the JLD payments, I am satisfied that the JLD payments represented expenditure by John. This is on the basis of the documents in the Taylor Bracewell files. Mr Butler's "Charlie and Nora Assets 2006" document noted that the extensions and refurbishments had been paid for by John via his bonuses from JLD "in the sum of circa £100,000 mid to late 1980s". The basis of Mr Butler's understanding is unclear but it was presumably information supplied by Nora and Charles. This would be consistent with Mr Potter's account of the meeting with Nora on 15 May 2008, according to which Nora and Charles mentioned that John had spent a substantial sum in the region of £100,000 in the 1980's improving the property and Mr Potter's note of a meeting with Mr Butler on 9 July 2008 which also refers to John having improved the house substantially to the tune of around £100,000 in the late 1980s. It is, however, relevant to bear in mind that JLD had been established by Nora and Charles and that assets from their business had been transferred to JLD to enable it to carry on the family business. John may well have regarded income generated by JLD as "family money" rather than his own personal resource which he would only have been willing to spend on a property of which he was, or would become, the owner.

Works in 2003

108. John claimed in his witness statement that he secured a re-mortgage on Tilts House in the sum of £120,000 of which £14,500 was to finance the balance of the original mortgage and the rest spent on building works at Wood House. He also referred to a copy of an invoice dated 20 August 2003 in the sum of £56,535.13 addressed to John, provided by his friend Bryan Hargreaves, which purports to relate to works done to the drive way and stable block at Wood House.

109. Lisa's position was that the mortgage was obtained in order to fund works at Tilts House, the mortgaged property, rather than Wood House. She disputed the authenticity of the copy invoice which she contended probably related to work done on a caravan site at Tilts Farm, for which payment was made not by John but by LWC.

110. There are some odd features of this invoice, including the fact that half of the name of the contracting company (Trelancrest Developments) was obliterated and the fact that the fax stamp on the invoice was dated 2010. But I agree with the defendants' submission that this obviously botched copy does not bear the hallmarks of a forgery. I am satisfied on the basis of the evidence adduced by John that, as with the original works, there was some personal expenditure by him on works to Wood House in 2003.

Works in 2010

111. John relied on the recording of expenses totalling £96,000 attributed to him within a directors loan account for LWC although the provenance of the relevant accounting record is unclear and it was apparently produced by Smith Craven at the behest of John. Moreover, the underlying invoice to which the works relate was addressed to Nora and Charles, not to John. I am not satisfied on the basis of this evidence that John personally incurred any expenditure in relation to the works carried out in 2010.

112. James claimed to have spent some £50,000 on doing up the Annex instead of purchasing his own property. It was submitted that he would not have acted in that manner if Nora had told him that his occupation of the Annexe could be brought to an end at her whim. There was no documentary evidence of the expenditure. Given his remarks at the Smith Craven meeting in 2015 at which he stated that he had "*incurred personal expenditure in relation to some fixtures and fittings*" but confirmed that these "*ultimately could be removed if he moved out*", I consider that any expenditure was much less than he claimed and was not inconsistent with his awareness,

recorded in the meeting note, that Wood House was still Nora's and Charles's.

Non-financial detriment

113. It was not disputed by Lisa that John and Lorraine had relinquished occupation, enjoyment and control over their newly constructed home at Tilts Farm, even though they were still paying for it; that they allowed Charles and Nora to live at Tilts House as they wished, including Lisa living there (rent free) for many years; that they uprooted themselves with a small child with additional health needs to take on a very significant project at Wood House necessitating the occupation of a caravan while the works were being undertaken; that they had developed Wood House over time, as they might otherwise have been expected to develop Tilts and encouraged James to establish his home at Edlington and to invest in the Annex.

Conclusion as to detriment

114. The financial and non-financial detriment described above does not, in my judgment, lead to the conclusion that John and Lorraine must have understood that they were, or would on Nora's and Charles's deaths become, the owners of Wood House. I accept the submission on behalf of Lisa that, even without any prospect of ownership, the arrangement under which John and Lorraine came to live at Wood House amounted to a very significant benefit to them in that they swapped the comparatively modest accommodation they owned at Tilts House for far more impressive and commodious accommodation at Edlington Wood where they have lived for over thirty years, rent free. It is therefore not necessary to postulate an understanding as to their ownership of Wood House in order to make sense of their conduct. On the contrary, the fact that John and Lorraine were prepared to suffer the detriment referred above and yet failed to ensure that any agreement or representation as to their ownership rights was ever recorded, asserted or referred to in Charles and Nora's Wills reinforces the conclusion that they well knew that no such agreement or representation was ever made.

Lisa's claim for occupation charges in respect of Wood House

115. The defendants accept that, in the event of the Court rejecting their claim to beneficial ownership of Wood House and the Annex, Lisa would be entitled to an order for sale and for payment for

rent for their use and occupation. I consider that Lorraine and James are liable to pay use and occupation charges and that no basis has been shown for maintaining a claim for occupation charges against Charles. There is no separate claim for occupation charges against Jodie. John has indicated that he will meet any order for occupation charges made against members of his family.

116. Until 2017 Lorraine, James and Jodie were allowed to live at Wood House rent free. On 15 August 2017 Nora's solicitors gave notice terminating the licence with effect from 23 October 2017. As licensees, Lorraine, James and Jodie were entitled to reasonable notice of termination of the notice (see *Winter Garden Theatre (London) Limited v Millennium Productions Limited* [1948] A.C. 173) which, in my judgment, taking into account the length of their residence at Wood House, would have been six months. Lisa is therefore entitled to occupation rent of 50% of the market rental of the property from 15 February 2018 until possession is given up (50% corresponding to Lisa's 50% beneficial ownership). There is agreed expert evidence as to the annual market rental figures.

117. The defendants contended that any use and occupation charge/mesne profits awarded in relation to Wood House should instead be assessed by reference to the rental value of Wood House and the Annex in their unimproved state i.e. by reference to their rental values in the early 1980s. This was on the basis of the principle stated in *Goff & Jones: The Law of Unjust Enrichment* 9th Edition (at paragraph 5-35) that "where the defendant improves the property, the use value should be settled by reference to its unimproved rather than its improved state, but if he has freely chosen to do this work then the amount payable for the use value of the land will not be reduced by the value of the defendant's work." It was suggested that, were occupation charges to be assessed by reference to the current market rate, Nora's estate would be unjustly enriched as the result of the money that was spent by the defendants on the Edlington renovation with Nora's encouragement or acquiescence. I do not accept this argument. This claim was not pleaded, and would likely give rise to considerable difficulties in differentiating improvement works, depending on who funded them.

Kilnhurst

118. It is not disputed that Lisa, acting on behalf of Nora's estate as co-owner of the Kilnhurst Site, is entitled to an account of the rental income that has been received in relation to the site since 1

January 2015 and to an order for payment of half the rent received. The claim was originally made against Charles alone but the defendants' case, advanced at the trial for the first time, is that after 1 March 2019, when Charles's interest in Kilnhurst was assigned to John, the rent was paid to John and for the period from 1 October 2019 was offset against sums due by him to LWC on his directors' loan account.

119. In these circumstances, an account should be given by John as well as Charles. The account should be made without reference to sums which are alleged to be owed by Lisa to LWC (which are the subject of separate proceedings) and should include any rent which has been off-set by John against sums owed by him to LWC on his directors loan account.

Pond Field House

120. Lisa, acting on behalf of Nora's estate as co-owner, is claiming an order for the sale of Pond Field House and an order that Charles pay rent in relation to his occupation of the property from 13 November 2017 until vacant possession of the property is given. Lisa would consent to the postponement of an order for the sale, so as not to take effect during Charles's lifetime or until such time as Charles ceases to reside at the property, but only on the basis that Charles pays occupation rent. Charles opposes the application for occupation rent and seeks a declaration as to his entitlement to live at Pond Field House rent-free for the rest of his life. John has offered to purchase Lisa's share of Pond Field House but on terms that are not acceptable to Lisa.

121. Lisa's claim to occupation rent was advanced on the following grounds:

a. Pond Field House was purchased as a residence for Nora, not Charles. There is no evidence to support the contention that Nora agreed or intended that Charles would be entitled to live at Pond Field House rent free after her death.

b. Occupation rent should be paid in order to do equity between the parties. Nora's estate is receiving no benefit from Charles's continued occupation which precludes the letting of the property to tenants or a sale so as to realise value for the benefit of Nora's estate.

c. Applying the provisions of the Trusts of Land and Appointment of Trustees Act 1996 ("ToLATA"), in particular s.12 and s.13(6) under which conditions may be imposed on a beneficiary where the entitlement of another beneficiary to occupy land has been excluded or restricted:

i. The right of Nora's estate to occupy Pond Field House under s.12 has been excluded or restricted by Charles.

ii. Under s.13(6)(a), trustees may impose reasonable conditions on a beneficiary in occupation of land requiring payment of compensation to a beneficiary whose right of occupation has been excluded or restricted.

iii. The Court should exercise its discretion to impose conditions on Charles by requiring him to pay compensation to Nora's estate.

iv. The agreed market rental value of the property for the period of Charles's occupation from 13 November 2017 is £15,000. An appropriate sum for the Court to award would therefore be £7,500 reflecting Nora's 50% interest.

122. Charles resists the claim for occupation rent, and advances his claim for a declaration, on the following grounds:

a. It was agreed between Nora and Charles that each of them would be entitled to live in one of the jointly owned properties rent-free and that, when one of them died, the survivor would have complete control over the properties and would be entitled to live in whichever property they chose. It is therefore not open to Lisa on behalf of Nora's estate to require Charles to pay rent in respect of Pond Field House.

b. Nora had no statutory right of occupation, pursuant to s.12 of ToLATA, which can be said to have been excluded or restricted by Charles's occupation. Even if she did, there is no basis, whether by reference to statute, common law or equitable accounting principles, upon which it can be said to be fair or equitable to require Charles to pay an occupation rent in respect of Pond Field House.

123. I consider that Charles is entitled to occupy Pond Field House for life on a rent-free basis. This is for the following reasons.

a. Applying the provisions of ToLATA, in particular s.15(1), the matters to which the Court is to have regard in determining whether to make any order include (a) the intentions of the person or persons (if any) who created the trust, (b) the purposes for which the property

subject to the trust is held. The intentions of the persons or persons who created the trust mean their common intention prior to the creation of the trust; see *White v White* [2003] EWCA Civ 924; [2004] 2 F.L.R. 321 per Arden LJ as she then was at [22]–[23].

b. I accept the defendants' submission that, at the time Pond Field House was acquired by Charles and Nora, it was their common intention and purpose that each of them would be entitled to occupy one of their properties rent free and that this arrangement would continue after the first of their deaths. Consideration of common intention and purpose therefore leads to the conclusion that no rent should be required to be paid by Charles and that he is entitled to occupy Pond Field House rent free for the rest of his life.

c. The same conclusion can be reached by reference to the trustees' powers under s.13. Under s.13(3) reasonable conditions can be imposed on a beneficiary in relation to his or her occupation of land. Under s.13(6)(a) those conditions may include conditions as to payment of compensation to a beneficiary whose right of occupation has been excluded or restricted. Under s.13(4), the matters to be taken into account in considering what conditions are reasonable include the intentions of the persons who created the trust and the purposes for which the land is held.

124. It is not disputed that Lisa is entitled to an order for sale in relation to Pond Field House to take effect upon Charles's death or ceasing to occupy Pond Field House.

The Chattels

125. The chattels in dispute comprise:

a. A Steinway baby grand piano;

b. Three oil paintings ("Hunting Scene", "Log Scene" and "Donkey and Child");

c. Two rings;

d. Three Hunter watches and chains; and

e. Other items of jewellery, including gold chains and cufflinks.

The Piano

126. Charles contends that the piano, which was removed from Pond Field House by Lisa before he went into occupation, was purchased with funds held in a joint account, that it was intended and understood by Nora and him to be held beneficially as joint tenants and that it therefore passed by survivorship to him. Lisa contends that the piano belonged to Nora and has now devolved to her.

127. The piano was purchased by Charles on the occasion of Nora's 80th birthday. This might be considered to point towards the piano being a gift to Nora and therefore her sole property. Lisa's evidence was that the purchase was funded by LWC and charged to Nora's loan account although there is no documentary evidence to support this assertion. Charles's evidence was, however, that the piano was purchased because Nora wanted him to learn the piano.

128. In Nora's and Charles's 2015 Wills the piano was treated as an asset belong to each testator (both Wills including the words "I give my Grand Piano to my daughter the said LISA MARY PICKERING"). Thus, unlike certain other items, it was not treated as exclusively Nora's asset but was treated in the same way as other jointly owned assets. The Wills were, as noted above, carefully drafted and are, in my view, reliable evidence as to the joint ownership of the piano. I therefore accept Charles's case that it is now his property.

The Oil Paintings

129. Charles claims an order for the return of three oil paintings on the basis that they belong to him and were removed from Pond Field House by Lisa.

130. Two of them (the "Hunting Scene" and "Log Scene") were bought by him in 1980 and he produced the relevant invoices. Lisa alleges that these two paintings were purchased as gifts for Nora and have now devolved to her. She also claims that the third painting ("Donkey and Child") was purchased by her at an auction in 2009 and is her property. She produced an invoice although she appeared to accept in cross-examination that she had attended the auction on her parents' behalf. Charles maintains that this painting was paid for with money from a joint account and that it was jointly owned with Nora. All three paintings were originally hung at Tilts House.

131. Doing the best I can on the basis of this limited material, I conclude that all three paintings were jointly owned by Nora and Charles and that they have now vested in Charles as survivor.

The Hunter Watches

132. Charles's Wills consistently made specific bequests of two Hunter watches. In 2018 his solicitors wrote to Lisa's solicitors asking for the return of a single Hunter watch. He is now claiming the return of three Hunter watches. His evidence is that these items were left at Tilts House when he moved out and that they were taken by Nora to Pond Field House when Nora moved there and left there when she died.

133. Lisa's evidence was that the Hunter watches belonged to her paternal grandfather and were gifted to David some years ago. David Hughes' evidence was also that the watches were given to him by Nora in 2006, having originally been owned by Charles's father.

134. I am not satisfied on the basis of this evidence that it has been established that Lisa removed the Hunter watches (which is the pleaded claim) and I do not propose to make any order in relation to them.

Rings and other jewellery

135. Charles's Wills also left specific bequests of two rings: a three stone gypsy ring and a platinum diamond ring. The evidence about these items and other jewellery was exiguous. Charles alleges that these items were kept in a safe at Pond Field House. Lisa's evidence was that the gypsy ring had been returned to Charles by Nora.

136. Again, I am not satisfied on the basis of this evidence that it has been established that Lisa removed the rings or other jewellery and I do not propose to make any order in relation to them.

Conclusions

137. For the reasons set out above my conclusions are, in summary, as follows.

a. Lisa is entitled to:

i. A declaration that the Edlington Wood Titles are held on trust for herself and John in equal shares;

ii. An order for sale in relation to the Edlington Wood Titles;

iii. Payment of occupation charges from Lorraine and James in respect of Wood House and

the Annex from 15 February 2018;

iv. An order for sale in relation to Pond Field House, expressed to take effect within a reasonable time after Charles's death;

v. An account of rent received by Charles and John in respect of the Kilnhurst Site.

b. Charles is entitled to:

i. A declaration that he is entitled to live rent-free at Pond Field House for the rest of his life;

ii. A declaration that that the Piano and the three oil paintings are his property and an order that they be returned to him.

138. I invite the parties to agree the terms of an order giving effect to this judgment.