



Case No: ZZ21D18441

Neutral Citation Number:[2024] EWFC 58 (B)

IN THE FAMILY COURT AT SHEFFIELD

50 West Bar  
Sheffield  
S3 8PH

Date: 14th March 2024

**Before :**

**HHJ BADDELEY**

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**Between :**

**JULIE ANNETTE MERRYMAN**

**Applicant**

**- and -**

**ALEX RAYMOND MERRYMAN**

**Respondent**

**-and-**

**ELIZABETH LAWSON**

**Intervenors**

**KATIE ANN MERRYMAN**

**SCOTT MERRYMAN**

**ROBERT PAUL MERRYMAN**

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**Mr Campbell** (instructed by Acclaimed Family Law) for the **Applicant**

**Mr Khub** of Zakery Khub Solicitors for the **Respondent**

**Mr Dable** (instructed by Wildblood Legal Limited) for the **Intervenors**

Hearing dates: 7<sup>th</sup> & 8<sup>th</sup> February 2024 and 14th March 2024

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**Approved Judgment**

This judgment was handed down remotely at 2pm on 14<sup>th</sup> March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ BADDELEY

**HHJ Baddeley:**

## Introduction

1. This judgment deals with the intervenors' application in financial remedy proceedings between their father, Alexander Raymond Merryman (65), and stepmother, Julie Annette Merryman (59).
2. The intervenors are Elizabeth Lawson (34), Katie Ann Merryman (32), Scott Merryman (31) and Robert Merryman (28).
3. Because all but one of the parties have the surname "Merryman", I shall use first names in this judgment.
4. The application concerns four properties, which I shall refer to in this judgment as:
  - i) Border View Farm
  - ii) Heavygate Road
  - iii) Dunston Farm
  - iv) Smugglers
5. The intervenors' case is that they are each entitled to a one-sixth share in each of the four properties by virtue of them being partnership property or alternatively by reason of the doctrine of proprietary estoppel.
6. Alex supports the intervenors' claim.
7. Julie accepts that the intervenors are equal one-sixth partners in the farming business, AR Merryman and Family. Her pleaded case was that they had no interest in any of the properties, although she accepted in evidence that she considered that the intervenors each had a one-sixth interest in all the land at Border View Farm except for the farmhouse, on the basis that the land at Border View Farm (but not the farmhouse) was an integral part of the farm business.

## Chronology

1999 – Alexander and Julie begin cohabiting. They both worked in partnership at Border View Farm, which had been rented by Alex's father. There was no written partnership agreement.

2000 – Julie bought Border View Farm. Alex was not initially a joint owner as he had been bankrupt.

2005 – Alex and Julie jointly bought a buy to let property at Heavygate Road, Sheffield, subject to an interest only mortgage with Kensington Mortgages.

2009 – Alex and Julie married.

2010 – Border View Farm was transferred into Alex and Julie's joint names.

2012 – Alex and Julie entered into a charge over Border View Farm with Clydesdale Bank.

2013 – Dunston Farm was purchased in Alex and Julie's joint names subject to a Clydesdale Bank charge.

2013 - All six parties to this application, save for Robert (who was not then 18), entered into an agricultural charge with Clydesdale Bank over Border View Farm, Dunston Farm (but not Heavycote Road) and the assets of the farm to secure significant borrowings. It appears to be common ground that Robert was subsequently added as a party to this charge, although a letter from the bank to Alex's solicitors on 16th January 2020 indicates that Robert had not been joined as a party to the charge at that time. The borrowings at the time were in the region of £1 million.

2019 – Alex instructed his solicitors to draw up a partnership agreement. There is a solicitor's file note which reads "Partnership agreement with children (not asset partners). Bank wants this... After completion Alex would like to make them partners in assets as well... [solicitor] to draft & send to bank manager."

2020 – on 26th February 2020, all 6 parties to this application signed a partnership agreement.

2021 – Alex and Julie separated in the Spring. Julie's solicitors wrote on 1st July 2021 to the farm accountant, Sally Wood, asking for financial details, together with the last 2 years accounts and tax returns. Sally Wood replied stating that Alex runs the farm / business as a sole trader and that he did not wish to release the accounts. This was not true.

Smugglers, Roman Bank, Sandilands, Mablethorpe was purchased in Alex's sole name on 22nd July 2021 for £148,000. Julie currently lives at Smugglers.

#### Agreed Issues

8. There is common ground in respect of the following:
  - i) All 6 parties to this application are equal partners in the farming business. This was confirmed in the partnership deed dated 26th February 2020.
  - ii) Alex and Julie devoted their working life to the development of the business, up until Julie's departure from Border View Farm at separation in 2021.
  - iii) Each of the intervenors has devoted their working life to the development of the business from the time they each left agricultural college or university.
  - iv) None of the parties has taken a salary at any point, with the business funding their day to day needs and anything left over being reinvested in the business. The 2022 accounts do include modest drawings, but it is unclear how these have been accounted for.
  - v) The business had only one bank account. All the transactions relating to the farm and the properties went through that account.
  - vi) Border View Farm is now a much bigger enterprise than it was, with a 4-bedroom bungalow having been built in 2001, a farm shop in 2007, and a café in 2019. A log cabin was purchased and an indoor space for a riding school created in 2016.

#### The Hearing

9. I heard the case over two days on 7th – 8th February 2024.
10. The Intervenors were represented by Mr Dable. Julie instructed Mr Campbell and Alex instructed Mr Khub.

11. As anticipated by DJ Roebuck when listing the hearing, there was no time within the two days to deal with submissions and judgment. Accordingly, it was agreed that the advocates would make their submissions in writing (with a right of reply) and I would give this written judgment.
12. I heard evidence from all six parties to the application.
13. I have considered the papers in the bundle, Mr Dable's skeleton argument, the detailed written submissions of the advocates and the responses of Mr Campbell and Mr Dable to the other advocates' submissions.

#### The Evidence

#### The Intervenors

#### Scott

14. Scott was the lead witness for the intervenors. He has worked full time on the farm since leaving Askham Bryan Agricultural College. The business has a contract to provide gritting services to Amey and he undertakes that work as well as general farm work.
15. Scott lives at Dunston Farm. He does not pay rent.
16. His evidence was that it was always understood that the farm would be passed onto the children when the time was right, and it was talked about often. He said in his statement that "it was the natural assumption of everybody that we children would take over the farm business when the applicant and the respondent were at an age where they would be slowing down... [we] were led to believe that all of the properties that the family/farm business owned, were owned by the Partnership and all of us equally."
17. In evidence, he said, "we were all led to believe that all the properties were or would become part of the partnership business and we would all get a share" and that both Alex and Julie said this during a series of conversations over the years.
18. He said that his getting a share in the property at Border View Farm was often discussed over the years. Scott was clear that Julie had promised him a share in Border View Farm from an early age.
19. There were discussions whereby he was promised a share in Dunston Farm and Heavygate Road but less often. He could not give a specific occasion when Julie made a promise in respect of Dunston Farm but that she said this on "numerous occasions". He was less clear, when asked about Heavygate Road – "I believe [Julie] made a promise re Heavygate Road – I'm confident but we are talking over 15-20 years [ago]."
20. As to Smugglers, he said "probably not so much – we weren't going to have a share in it as it was bought for [Julie] to live in and she was living there."
21. Scott was unable to recount any specific discussions – he said that there was a series of conversations involving both Alex and Julie over the years.
22. Scott said that when he signed the agricultural charge in 2013 "they sat us down and said we were liable for this debt. They said at that point that we were partners in the property and the business."

23. He said that it would make no sense to make him liable for £1 million debt and for Alex and Julie to say that they would keep the properties and he could pay the mortgage and take on all the debt. He wouldn't have signed the charge without an expectation of receiving a share in the properties. He would have taken a job with a view to setting up his own farm elsewhere. He said, "why would I go out looking for something else when I was promised a share of the farm and the buildings."
24. Scott saw that the properties were an integral part of the business saying that "you can't be much of a farmer without a farm."
25. Scott said that he had done some works on Dunston Farm, with materials paid for by his wife – installing a second-hand kitchen and replacing the bathroom. He has also done odd jobs at Heavygate Road over the years, fixing leaks, a bit of tiling, general DIY upkeep jobs.
26. Scott said that he read the partnership agreement before signing it but did not understand it all at the time. His understanding was that all the properties were held by the partnership.

#### Elizabeth

27. Elizabeth lives with her husband and their children on her husband's family farm in the Mayfield Valley. She has worked full time at Border View Farm since leaving college. Her responsibility is the sheep and the farm paperwork. She can combine this work with her childcare responsibilities.
28. Elizabeth's evidence was that when she left college, she was told that there was not the money to pay her a wage but that she would have an equal share in "all of this", meaning the business and the properties. She said "I have helped build the farming business to what it is by not taking any financial gain from it. I believe it is simply absurd and untrue to think I would do all this work for so little and for so long without the promise of a share in the business." To her, the business and the properties were one and the same – "without a field, there is no point in having sheep."
29. She gave an example of a time that a rep would visit and make a joke about Alex and Julie breeding a workforce. The response would be that the children are all partners, and it will be theirs one day.
30. Elizabeth confirmed that the rents from Heavygate Road would be paid into the farm account and any repairs to that property would be paid for from that account.
31. In respect of the paperwork, she described herself as a glorified secretary, leaving the accountant to prepare the accounts.
32. She said that she had lived at Dunston Farm prior to moving to her current home and had done some works there from personal money as it was "a bit ramshackle".

#### Katie

33. Katie lives rent-free at Dunston Farm. She has worked full time at Border View Farm since leaving university. Her main responsibility is the horses and the riding school.
34. In her statement, Katie said that there "was a clear understanding from all of us that we would have an equal share in the farm and the property and stock as we were all putting an equal share of work in and would also fall liable to any debts."

35. She could not identify a specific occasion when promises had been made about the properties, but she knew that these things had been said – Katie said that there was no way that she would be where she is now at 32, having put in all that hard work without a wage had she not known that she was an equal partner – “that would have been stupid”. Has she not been told that she would get a share of the properties, she would have demanded a wage or moved away. The properties are integral to the business – “the property is the business.” She was sure that all 6 of the parties to this application were equal partners – it was not “5 of us being entitled to one half and the sixth being entitled to the other half”.

#### Robert

36. Robert lives rent-free in a rented farm cottage. He has worked full time on the farm since leaving college, undertaking general farm work and working on the Amey gritting contract.
37. His evidence was that had he not been assured that he would have an equal share in the business, the properties, stock and assets, he would have left to pursue his own farming venture.
38. Like his siblings, Robert was unable to recall a specific occasion where promises were made about the properties. He said if ever he asked for a wage, he was told that he was an equal partner. He took that to mean in everything. He asked why would he put his name on a mortgage that he didn't get anything from?
39. I find that the intervenors were each doing their best to tell the truth. They each came across as fair and reasonable, saying much the same thing in their own different ways. Their evidence made sense. They have each worked long hours for years on the farm without drawing any wage. They are parties to an agricultural charge with a value of £1 million or so. It makes perfect sense that they should get something in return for the investment of their time and assumption of significant liabilities. All witnesses agreed that the farm was very much a family endeavour with all parties working hard in different ways to build the business.
40. Mr Campbell highlights that none of the intervenors could pinpoint specific discussions relied on. He described the evidence as generalised and non-specific – “no specific occasion could be recalled to put meat on the bones.” I accept the intervenors' evidence however that there were many discussions and that there was a common understanding that they would have a share in everything to do with the farm. In those circumstances, it is not surprising in my judgment that the intervenors could not to point to one or two specific discussions.
41. I accept the intervenor's evidence that Alex and Julie did tell them that they would have a share in the farm and that that included the land as well as the business. As Scott put it in his statement, “It was a common understanding that we would have an equal share of the farm (including property and stock) as we all put in an equal share of the work and latterly, all had a share of the debts and liabilities.”

#### Alex

42. Alex cannot read and write. Care was taken during his evidence to read out any documentary evidence on which he was being asked to comment.
43. He agrees with the intervenor's claims and considers that they each have a one-sixth share in each of the four properties. His case is that his children worked on the farm without pay because of promises that Julie and he both gave that they would share all the assets, including the properties.

44. In evidence, he said that as far as he was concerned, the properties have always been assets of the farm. Both Julie and he have told the children many times that it will all go to them.
45. Alex said that Julie did not question whether the properties were to be partnership assets under the partnership agreement – “if she had, I would have said of course they are”.
46. Alex told me that the main point of the partnership deed was formalise the children’s interests in the properties. He understood that the properties were already partnership property when the deed was signed. He said he could not understand why the solicitor’s note recorded that he has said that the children were not asset partners.
47. He further denied that he had told the accountant, Sally Wood to tell Julie’s solicitors in July 2021 that he was a sole trader. He accepted that this letter was just wrong.
48. Alex was referred to his statement in respect of Julie’s maintenance pending suit application, in which he said that he personally must pay the finance payments on Smugglers at £280 pcm for the interest and £833.33 pcm for the capital. When it was pointed out to him that this was inconsistent with his claim that Smugglers was partnership property, he said that his MPS witness statement was wrong. He could not explain why he had said this. There is only one account and all the payments come out of that. The children are all joint account holders and signatories to this account. He doesn’t even have a personal bank account.
49. Alex said that he borrowed money off three friends and used that loan, together with the sale proceeds of some farm machinery to buy Smugglers. He said in evidence that the loans have been repaid from the farm business accounts – and not by him personally.
50. I treat Alex’s evidence with caution. I accept Mr Campbell’s submission that he is disposed to giving such evidence as he thinks suits his best interests in the circumstances.
51. Sally Wood’s 5th July 2021 letter to Julie’s solicitors can only have been written on Alex’s instruction because it said at paragraph 5i) that Alex did not wish her to release the farm’s trading accounts. This letter postdates the partnership agreement and, in my judgment, shows Alex’s lack of openness and honesty. I find that by this letter, he was trying to obscure the true picture.
52. Alex has said other things that are contradictory – for example saying in his MPS statement that he personally must repay the borrowings on Smugglers and in his evidence that this would be paid by the partnership.
53. I find that Alex will do what he thinks is necessary to secure the best result in this litigation.

### Julie

54. Julie said that her role was mainly with the stables, the kennels, and the cattery but that everyone helped with all the jobs that were necessary. She had some involvement with the paperwork, but trusted Sally Wood to do the accounts and the tax returns.
55. She said that she did not recall any discussions around the children’s shares in the properties. She said that Alex and she said that they would make the children partners in the business, to give them security. She felt that this was enough. As far as she was aware, the properties were separate because they were in Her’s and Alex’s names. She

accepted that, if this was right, the children may have been better off working elsewhere but said that they wanted to work on the farm, as farming is in their blood.

56. She described the partnership agreement coming in the post from the solicitors and that she signed it without reading it, trusting it to be “all above board and legal”.
57. She remembered the jokey discussion with the rep who was surprised that the children didn’t get a wage. However, her interpretation of the comment that “it will all be theirs one day” was reference to the time when Alex and she had died.
58. Julie said that she did not recall any discussions about the difference between the business and the properties. She was specifically asked about the time when the riding school roof was built at considerable cost (about £80,000). She said that she did not recall any discussions with the children around whether they would benefit from the improvement works.
59. Julie conceded in cross examination that she considered the land and agricultural buildings at Border View Farm to be partnership assets. She maintained that the farmhouse itself was not a partnership asset. Mr Khub asked her how she came to segregate the house from the rest of the property at Border View Farm. She said that she had had to look at things deeply now to see how they needed to split things but conceded that she had never spoken to the intervenors to say that the farmhouse belonged to Alex and her but that the rest of the property belonged to everyone.
60. Julie told me that the idea behind the purchase of Heavygate Road was that this would be a pension for Alex and her. She said that it was not part of the business and that the money went thought the business accounts solely for convenience, the rent being split between Alex and her on their tax returns.
61. Julie did not understand how Alex had funded the purchase of Smugglers. This was initially intended to be a holiday home for the two of them. She does not believe that it is an asset of the partnership.
62. Julie’s evidence about where the line was drawn between personal and partnership property was confusing (and as Mr Dable put it, “legally eccentric”). Julie struggled to differentiate the farming business from the land at Border View Farm in her evidence, saying that she believed that everything apart from the farmhouse was a partnership asset.

#### The Issues

63. The issues for me to determine are:
  - i) Are any of the four properties partnership assets?
  - ii) If any are not partnership assets, are Alex and / or Julie prevented from relying on their rights to those non-partnership properties by proprietary estoppel?
64. As the intervenors bring this claim, they have the burden of proof on the balance of probabilities.

#### Are the Properties Partnership Assets?

65. The Intervenor’s case (supported by Alex) is that all four properties are partnership property and so the intervenors each have a one-sixth share.



66. Julie's case is that the Properties are not and cannot have been assets of the partnership business because of the express provisions in the partnership agreement to contrary effect.
67. It is therefore necessary to construe the partnership agreement.
68. A court construes a partnership agreement to gather from it the intention of the partners as expressed in it. The agreement may bear different meanings in different places: Watson v Haggitt [1928] AC 127).
69. Interpretation is 'the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract' (Per Lord Hoffmann in ICS Ltd v West Bromwich Building Society [1988] 1 WLR 898 at 912).
70. In Yafai v Muthana [2012] EWCA Civ 289, the Court of Appeal approved the proposition that "the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other."
71. The Court can look to other factors to ascertain the parties' common intention for the property. The relevant considerations will generally be:
  - i) the circumstances of the acquisition, with particular reference to the source from which it was financed.
  - ii) the purpose of the acquisition.
  - iii) the manner in which the asset has subsequently been dealt with.
72. Where land or other property is acquired with partnership money (including money the partnership borrowed) then the inference is that the property is partnership property, even if it is not used for partnership purposes. Section 21 of the Partnership Act 1890 provides "unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm."
73. The partnership deed should have clearly defined the partnership property. Had it done so, the need for this expensive and stressful litigation could probably have been avoided. Unfortunately, the partnership agreement is very poorly drafted.
74. The key provisions of the partnership agreement are as follows:
  - i) The commencement date was said to be "circa 2001".
  - ii) Clause 7 provided that "The capital for the time being of the Partnership shall belong to the partners in the proportions in which it has been contributed by them as set out in the accounts of the partnership."
  - iii) Clause 10 provided that "A copy of the accounts shall be provided and signed by each partner who shall be bound by them unless some error is discovered within three months..."

- iv) Clause 20 read: “In the absence of any contrary written agreement where any land is held by a Partner (“the Land holder”)(whether as owner or licensee) but farmed by the partnership:

20.1 such land shall remain vested in the Land holder beneficially and the other partners shall have no beneficial interest in it.

AND

20.2 the other partners shall occupy such land jointly with the Land holder as licensees only and shall vacate the same immediately on demand subject to the payment of compensation for any growing crops.

OR

20.3 the [freehold property][tenancy of the tenanted land] shall continue to be held on behalf of the partnership and the Partnership shall indemnify the Landholder against the rent reserved by or the liabilities of the tenant under the tenancy].

OR

20.4 in respect of any period during which any land is held by the Landholder but farmed by the Partnership the Partnership shall indemnify the Landholder against the rent reserved by and the liabilities of the tenant under the tenancy of that land.”

75. Mr Campbell argues on behalf of Julie that the proper construction of clause 20 is that 20.1 applies come what may and that clause 20.1 was intended to sit with one of 20.2, 20.3 or 20.4. Mr Campbell’s submission is that 20.1 “can work perfectly well with any one of the rest”. He seeks to get round the apparent inconsistency between 20.1 and 20.3 by arguing that clause 20.3 (and 20.2 and 20.4) are concerned with practicalities, rather than legal or beneficial ownership.

76. His submission is that:

“Clause 20.3 fetters the Land holder’s freedom to dispose of the freehold property (if he or she holds the freehold) or the tenancy (if he or she is a tenant). For so long as the land is farmed by the Partnership, the Land holder must continue to hold it “on behalf of the Partnership”, meaning in such a way as to permit the Partnership to carry on its business on that land. In other words, the Land holder cannot sell the freehold (if they are the freeholder) or assign/sublet the tenancy (if they are a tenant) to someone else as this would potentially result in the eviction of the Partnership from the land farmed and thereby have a deleterious effect on the business.”

“What clause 20.3 does not do, in so far as it may be contended otherwise, is displace the position at clause 20.1 that the other Partners have no beneficial interest in the land farmed. The words “on behalf of the Partnership” do not mean “on trust for the benefit of the Partners”. If that was what was intended, clause 20.3 could have said so (given the polar opposite expression is used at clause 20.1).”

77. The issue is important because Mr Campbell goes on to argue that because the partnership agreement postdates any alleged representations that might otherwise give rise to a proprietary estoppel, the partnership agreement expressly prevents the intervenors from establishing an estoppel claim because it definitively declares the position on the parties’ beneficial interest in the properties.

78. The position of the “AND” and “OR” words in Clause 20 supports Mr Campbell’s analysis to some extent, the “AND” appearing after 20.1 and the “OR” s between 20.2 and 20.3 and between 20.3 and 20.4. However, the position of these words could equally mean that Clauses 20.1 and 20.2 are intended to sit together and that either Clause 20.3 or Clause 20.4 could be used instead. I suspect that these were alternative clauses in a precedent document and that appropriate deletions were not made.
79. Whilst it is very clearly put, I cannot accept Mr Campbell’s suggested interpretation of Clause 20. In my judgment, clauses 20.1 and 20.3 cannot be reconciled. The sub-clauses do not make sense, when read together. I cannot see that “on behalf of the partnership” in 20.3 can mean anything different to “on trust for” in 20.1. It is straining the ordinary meaning of the words too far to suggest any different.
80. In my judgment, Clause 20 is meaningless. It cannot be interpreted in a way that makes sense. It does not therefore assist when determining the issue of what constituted partnership property.
81. I accept Mr Dable’s submission that “The contention advanced by Mr Campbell... is too narrow and strains against any objective reading. Clause 20.3 is manifestly an alternative provision inconsistent with Clause 20.1. It is therefore open to the Court to determine which, if either of the alternatives were agreed to by the parties. Placed with such a clear ambiguity, the Court will be obliged to look beyond the wording of the document in order to determine the intention of the parties to it.”
82. It is therefore necessary to look at the extraneous evidence illuminate the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract. Would such a reasonable person conclude that Clauses 20.1 and 20.2 apply or would they conclude that Clause 20.3 reflected the parties’ agreement?
83. In Ham v Bell [2016] EWHC 1791 (CH) HHJ McCahill QC had to decide whether farm land and buildings became the property of a new partnership on the admission of a new partner. He referred to Section 20 Partnership Act 1890 which states, “All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property.”
84. He then noted that section 20 does not assist in determining if a particular item of property was, within the wording of section 20, “brought into the partnership stock”.
85. He noted that it is common for farming partnerships to farm land owned by one or more of the partners without the land being a partnership asset.
86. Citing Miles v Clarke [1953] 1 WLR 537, he said that where there had been no express agreement as to what partnership property was, that property owned by one or more partner at the start of the partnership will only be treated as brought into the partnership stock if it is expressly or impliedly agreed between the partners.
87. Notwithstanding the inclusion of the disputed assets on the partnership accounts, it was decided that the disputed assets were not assets of the new partnership. The following passage from The Encyclopaedia of Forms and Precedents was cited and it was said that accounts “are no more than evidence and if they do not reflect what was agreed they fall to be disregarded:”

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

88. Ham v Bell was considered in Wild v Wild [2018] EHC 2197 (Ch) when considering the circumstances in which an agreement that property is partnership property can be inferred:

“The relevant agreement or consent can be inferred or can arise by implication. However, care is needed in deciding whether such inference or implication is appropriate. When the court infers such an agreement it is making a finding of fact and holding that the evidence is such that the parties must have made such an agreement either expressly or by their actions notwithstanding a current contention to the contrary. There is to be an implication that a particular item of property has become a partnership asset where there is a partnership formed by agreement and the bringing in of the asset is implied as a term of that agreement by application of the normal rules for the implication of terms. This approach was exemplified by the approach of Harman J in Miles v Clarke [1953] 1 WLR 587. Harman J had to determine whether the lease of premises from which a partnership operated a photography business was an asset of the partnership and he set out the approach to be adopted thus (at 540): “In my judgment no more agreement between the parties should be inferred than absolutely necessary to give business efficacy to that which has happened, and that is the only safe way to proceed.”

“In the circumstances of farm land being used by a farming partnership as happened in this case it is not normally necessary for business efficacy to imply a term that the farm land is a partnership asset. In my judgement there is no such need in this case as the partnership could operate entirely effectively on the footing that Ben Wild retained ownership of the Farm. That is an arrangement which is adopted, as HH Judge McCahill QC pointed out, in a considerable number of farming businesses. The question then becomes one of whether an agreement to that effect is to be inferred. In this case this means that I must consider whether I am to conclude from the circumstances taken in the round that Ben Wild intentionally brought the Farm into the partnership with the First Defendant agreeing to that or at least accepting that the Farm was being or had been brought into the partnership. This is a matter not of implication but of inference.”

89. Factors pointing to the properties being partnership property are:

- i) The properties had been included on the balance sheet in the accounts.
  - a) Unsigned accounts are in the bundle for the years ended 31st January 2020, 2021, and 2022. The 2020 accounts include the 2019 previous year information.
  - b) The 2020 and 2021 accounts are in the name of AR Merryman. The 2022 accounts are in the name of AR Merryman and Family and include a Capital Accounts page showing capital accounts of between £200,000 and £250,000 for each of the 6 parties to this application.

- c) The accounts show land and property holdings of 1.376 million in 2019, 2020 and 2021 and £1.704 million in 2022. It is likely that the increase in capital from 2021 to 2022 reflects the purchase of Smugglers. The £1.704 million capital consists of the following:
    - i) Border View Farm - £880,000
    - ii) Heavygate Road - £148,000
    - iii) Dunston Farm £378,382
    - iv) Smugglers - £180,000
    - v) The log cabin at Border View Farm - £30,304
    - vi) Sheds (possibly the riding school works at Border View Farm) - £87,500
    - vii) Buildings / improvements - £31,412
  - d) The accounts also show the £144,651 Heavygate Road mortgage as a liability and the rents received (presumably including from Heavygate Road) as income throughout the period. The accounts contradict Alex and Julie's tax returns as the tax returns show that the Heavygate Road rent was split between Alex and Julie on their tax returns, rather than between all 6 partners.
  - e) The Smugglers loan / mortgage of £172,222 is a liability in the 2022 accounts.
- ii) Clause 7 of the partnership agreement provides for two things.
- a) Firstly, that the capital of the partnership shall belong to the partners in the proportions in which it has been contributed by them. The intervenor's case is that they have contributed capital by their labour – “sweat equity” as Mr Dable put it.
  - b) Secondly, that those contributions shall be set out in the accounts of the partnership.
  - c) No accounts have ever been approved by all the partners, however. The only accounts purporting to attribute capital between the partners are the 2022 accounts which have been prepared on Alex's instructions without Julie's agreement. I have found Alex to be prepared to act dishonestly to further his interests in the financial remedy case. These accounts do not therefore help me in respect of the capital contributions. It is likely that they have been prepared to present Alex's case in the best possible light.
  - d) The 2022 accounts are however consistent with the 2019, 2020 and 2021 accounts in respect of the inclusion of the properties on the balance sheet. The previous accounts appear to have been produced on the erroneous basis that Alex was the sole proprietor of the business.
  - e) All witnesses said that accountancy issues were left to Sally Wood. Elizabeth, who deals with the farm paperwork, described herself as a glorified secretary, just doing the data entry for Sally Wood.

- iii) The solicitor's note of his conversation with Alex prior to the agreement being drafted. Alex told the solicitor that the children were not asset partners but that "after completion Alex would like to make them partners in assets as well." "Completion" here must relate to completion of the partnership deed. I do not accept Mr Campbell's submission that it related to something else, perhaps the completion of covenances of the properties.
  - iv) The funding of the three properties owned at the time of the partnership agreement had come through the partnership. Section 21 Partnership Act 1890 provides that "unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm."
    - a) Julie's evidence about the source of the Heavygate Road mortgage was that the "money will have come from the work that Alex and I did on the farm." She said in her statement that Heavygate Road was subsequently remortgaged in about 2017 with the money being "used to prop up the family and its outgoings." The mortgage is currently for £144,500, not much less than the initial purchase price of £148,000. In reality, the farm account will have contributed little to the purchase, particularly if the remortgage monies were invested back into the farm.
  - v) Dunston Farm was very closely linked to the farming business, being situated nearby and being used to accommodate three of the intervenors at different times.
  - vi) The agricultural charge covered Border View Farm and Dunston Farm.
90. Pointing the other way are:
- i) The charges over Border View Farm and Dunston Farm were in Alex and Julie's names only.
  - ii) The tax treatment of the Heavygate Road income – this was included on Alex and Julie's tax returns and not split between the partners.
  - iii) Heavygate Road was not an integral part of the farming business. It was a student buy to let, that Julie described in her evidence as having been bought as a pension – so presumably for Alex and Julie but not the intervenors. The intervenors have done some minor jobs from time to time at Heavygate Road, but not so different from members of other families where the parents own a rental property.
  - iv) Smugglers has nothing to do with the farm, having been initially considered a holiday home and then a home for Julie.
91. My finding is that there was a common understanding that all of the land and buildings (including the farmhouse) at Border View Farm was partnership property. Further, that the partnership property included Dunston Farm. Dunston Farm was integral to the farming business. Whilst there are only 4 acres there, it is only a few hundred metres away from Border View Farm and has been used as accommodation for three of the intervenors at different times.
92. I find that Julie never said anything to the intervenors to say that they did not have any interest in Border View Farm and Dunston Farm, but only in the farming partnership.

93. The intervenors had all worked hard without payment on the farm since completing their education. Mr Dable calculated a total of 77 years between them. It makes little sense for them to have done this if they were not to be owners of the farm property, which is where the much of the value created by their hard work would be.
94. It would not have made economic sense for them to have put all that effort in to have a share of the business alone, simply because they were family, farming was in their blood and that they might inherit in due course.
95. This view is supported in relation to Border View Farm and Dunstan Farm at least by the best piece of documentary evidence, namely the solicitor's note of Alex's instructions.
96. I do not find that the other two properties were partnership property. The evidence does not show there was a common understanding that these properties would be partnership assets.
97. Heavygate Road is not part of the farm but is a student house. I accept Julie's evidence that "we bought Heavygate Road for our pension. To me, it is a home in joint names and not part of the business." This makes sense to me. Alex and Julie would need an income in retirement once they had passed on the farm to the children. It doesn't make sense to me that they would then want to share their pension with the children.
98. The intervenor's evidence about Heavygate Road (and Smugglers) was less certain than their evidence about the farm properties. Scott said that there were less discussions about Heavygate Road. I preferred Julie's evidence about this property.
99. Likewise, Smugglers had nothing to do with the farm and, whilst initially envisaged as a holiday home, was to be a home for Julie following separation by the time it was purchased by Alex in August 2021. Alex said in his MPS statement that he would be personally responsible for repaying the borrowings. Scott said in his evidence that "we weren't going to have a share if it was bought for Julie to live in and she was living there." Given the purpose behind the acquisition of Smugglers, I cannot see that there can have been the intention for this to be partnership property. Scott said as much in his evidence.
100. I do not consider the accounts to be definitive evidence in respect of Heavygate Road and Smugglers. In respect of Heavygate Road, the tax returns contradict the accounts. The accounts were never signed.
101. In my judgment, a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of signing the partnership agreement would conclude that the common intention was that Border View Farm and Dunston Farm but not Heavygate Road would become partnership property upon the signing of the partnership agreement.

#### Proprietary Estoppel

102. The intervenors each claim a one-sixth interest in each of the properties by proprietary estoppel if I find that they do not already have such an interest through the partnership.
103. Julie's case is that:

- i) she did not make any promises that the Intervenor had, or would acquire, an interest in the Properties. Further, if Alex made such promises, Julie was neither party to them nor was she aware of them.
  - ii) The Intervenor did not rely on the alleged promises as their actions would have been substantially the same had such promises not been made and the Intervenor's interests confined to the non-property business assets.
104. Proprietary estoppel was described in In Re Basham decd [1986] 1 WLR 1498, 1503: 'Where one person, A, has acted to his detriment on the faith of a belief, which was known to and encouraged by another person, B, that he either has or is going to be given a right in or over B's property, B cannot insist on his strict legal rights if to do so would be inconsistent with A's belief.'
105. There are three main elements to a proprietary estoppel:
- i) an assurance by B (whether by words or inferred from conduct)
  - ii) reasonable reliance on the assurance by A and
  - iii) detriment in consequence of that reasonable reliance.
106. Julie concedes that the intervenors have acted to their detriment. The contentious issues are assurance and reasonable reliance.
107. Mr Dable referred me to the recent proprietary estoppel case of Spencer v Spencer [2023] EWHC 2050 (Ch). In that case, Mr Justice Rajah considered the three elements of proprietary estoppel, noting that:

"these are not, however, watertight compartments. As Robert Walker LJ said in Gillett v Holt at 225: "...it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments... the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a 'mutual understanding' may depend on how the other elements are formulated and understood. Moreover, the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end the court must look at the matter in the round."

The assurance must be 'clear enough' but what amounts to sufficient clarity, as Lord Walker explained in Thorne v Major at [56] is "hugely dependent on context". In its proper context the assurance must be reasonably understood by A to be unambiguous and intended to be taken seriously. B's subjective intention in making the statement is not relevant; what matters is how the statements were reasonably understood; Thorne at [3-5], [17] and [18].

The assurance must be that A will acquire a proprietary interest in specified property owned (or possibly about to be owned) by B; Thorne at [2] and [61]. It flows from this principle that an assurance that A will be given merely a job, role or responsibility... cannot give rise to a proprietary estoppel; Gladstone v White [2023] EWHC 329 (Ch) at [23].

There must be a sufficient link between the assurance and the conduct which constitutes the detriment. B's communications do not have to be the sole inducement for A's conduct; it is sufficient if they are an inducement: Gillett at page 226G-H.



108. If I am wrong as to my construction of the partnership agreement, the result will be the same because in my judgment, the elements of a proprietary estoppel are made out here.
109. I find that Alex and Julie made sufficiently clear promises in respect of both Border View Farm and Dunston Farm, but not Heavygate Road or Smugglers.
110. I find that the intervenors each relied on these promises when committing their working lives to the farm. Their evidence on this issue was compelling. They each said in their own way that they would have been foolish to put in all that effort for a share in the farm income alone.
111. In my judgment, the evidence of the intervenor's reliance on those assurances is overwhelming.
112. Detriment is conceded by Julie.
113. As to remedy, Mr Dable refers me to paragraph 94 of the judgment in Guest v Guest [2022] UKSC 27: "The aim [of the remedy] remains what it has always been, namely the prevention or undoing of unconscionable conduct. In many cases, once the equity is established, then the fulfilment of the promise is likely to be the starting point, although considerations of practicality, justice between the parties and fairness to third parties may call for a reduced or different award. And justice between the parties may be affected if the remedy is out of all proportion to the reliant detriment, if that can easily be identified without recourse to minute mathematical calculation, and proper regard is had to non-monetary harm."
114. There is no reason to depart from the starting point in this case. The proportionate outcome is that the four intervenors, who have been working long hours on the farm for many years should get what they were promised, namely equal shares in Border View Farm and Dunston Farm.
115. Finally, I shall deal briefly with Section 2 Law of Property (Miscellaneous Provisions) Act 1989, as this provision is relied on by Mr Campbell, given the lack of written documentation to evidence the transfer of Border View Farm and Dunston Farm from Alex and Julie (or the initial partnership between them) to the new partnership including the intervenors.
116. I note the view expressed in Lindley & Banks on Partnership Chapter 7 Section 2 as to the applicability of this provision in relation to partnership agreements relating to land:
- "The potential application of the... section... to agreements for partnership received close judicial attention over the years but... a number of uncertainties still remained. Nevertheless, it is submitted that... Lord Lindley's views thereon are indicative of the approach which the courts may adopt in relation to section 2 of the 1989 Act, when and if the point is tested:
- "1. that a partnership constituted without writing is as valid as one constituted by writing; and
2. that if a partnership is proved to exist, then it may be shown by parol evidence that its property consists of land."
117. The lack of written evidence will not prevent an estoppel, in any event.

### Conclusion

118. For these reasons, I find that the intervenors each have a one-sixth share of Border View Farm and Dunston Farm but that they have no interest in Heavycate Road or Smugglers.

HHJ Baddeley

14<sup>th</sup> March 2024.