Neutral Citation Number: [2024] EWHC 2727 (Comm)

Case No: CC-2024-NCL-000003

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN NEWCASTLE
CIRCUIT COMMERCIAL COURT (KBD)

The Moot Hall, Castle Garth,
Newcastle upon Tyne, NE1 1RQ

Date: 30/10/2024

Before :

HH JUDGE DAVIS-WHITE KC
(sitting as a Judge of the King's Bench Division)

- -

Between :

CHRISTOPHER ANDREW CORFIELD	**Claimant**
- and -	
CHRISTINE MARIE HOWARD	**Defendant**

- -
- -

Mr Lee O'Sullivan (instructed by **Harland & Co**) for the **Defendant**
Mr Seth Kitson (instructed by **Bakerlaw**) for the **Claimant**

Hearing dates: 30 September 2024

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Approved Judgment

This judgment was handed down remotely at 10.00 am on 30 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HH JUDGE DAVIS-WHITE KC

HH Judge Davis-White KC :

1. This is an application, by application notice dated 30 January 2024, by the Defendant, Christine Marie Howard. In it she primarily seeks (as has now been clarified) declaratory relief as to the meaning of and enforcement of a settlement agreement (the "Settlement Agreement") scheduled to a Tomlin order (the "Tomlin Order") in proceedings between her and the Claimant, Mr Christopher Andrew Corfield. A Tomlin order is an order staying the proceedings on the basis of an agreed settlement between the parties, which agreement may, if necessary, be enforced in the proceedings.

2. The substantive proceedings were commenced by claim form issued on 1 May 2018. The Tomlin Order was made on 19 June 2020. (It is defective in identifying the sitting dates of the trial but not clearly the date of the order itself. I order amendment of the same under the slip rule, CPR r40.12). I understand 19 June 2020 to have been the fifth day of the trial, settlement negotiations having commenced towards the end of the preceding court day.

3. On this application I heard from Mr Lee O'Sullivan of Counsel, on behalf of the applicant and Defendant to the original proceedings, Ms Howard. Mr Seth Kitson of Counsel, represented the Claimant and respondent to the application, Mr Corfield. I am grateful to both Counsel for their submissions. Neither were counsel at the time that the settlement agreement was negotiated and the Tomlin Order made.

Skeleton arguments

4. I should note that by a consent order dated 26 June 2024, skeleton arguments were due to be served and filed by 10am one clear day before this hearing. The hearing being on Monday 30 September 2024, this meant that Skeleton arguments were due to be filed and served by 10am on the preceding Thursday, 26 September 2024. No skeletons had been filed and served by the due date. Court staff time was then taken up in identifying the breach and writing chasing letters to the parties' respective lawyers.

5. Mr Kitson filed his skeleton by email sent or received at 21:59 on 26 September 2024.

6. By email sent/or received the following day at 15:41 Mr O'Sullivan apologised for the fact that his skeleton argument was not ready and said that this was due to the "timing of his instructions". A skeleton was sent through by email on Sunday night, 29 September at 23:33.

7. On enquiry of Mr O'Sullivan at the start of the hearing it appears that at the time papers were sent to him to prepare a skeleton argument he was engaged in another case or cases in court. On this occasion I do not need to enquire further as to where the fault lay. Counsel (or Counsel's clerk) and instructing solicitors should liaise in good time to ensure that the required skeleton argument can be prepared by counsel by the required time, and that should include taking into account counsel's other commitments and the time needed to get the documents to counsel.

8. There still seems to be a prevalent view that skeleton arguments can be lodged late, as long as they are received by the Court in advance of a hearing and with a period between delivery that the relevant party's legal advisers consider sufficient. As has been pointed out by many Judges, the delivery of skeleton arguments in accordance with guidance

or court order is essential for the efficient running of the courts. If skeleton arguments are not delivered when required, staff and judicial time can unnecessarily be taken up in chasing for them and hearings can be elongated. This can be to the detriment of other litigants. Both the Judge and the other side need time to consider skeleton arguments which are lodged and served. Further, it cannot be assumed that a Judge is able to devote all the time required solely to one case at the time that a party would like this to be done, for example in this case, Monday morning of the hearing or that this gives the other side time to prepare and react accordingly to legal arguments and authorities that may be relied upon in the late skeleton argument.

9. Furthermore, skeleton arguments in this case were in terms ordered by the court to be produced by a certain time. This was not simply guidance or a request. There seems also to be a view that court orders as to skeleton arguments are somehow less effective or have less force than other court orders. As I made clear to Mr O'Sullivan, the court is likely to impose sanctions in cases as egregious as these. Indeed, one possibility in like cases is that the Court will have to adjourn a hearing at the cost of the party in default, though happily such an extreme measure was not necessary in this case.

The original proceedings

10. The original proceedings concerned a legal business partnership between Mr Corfield and Ms Howard. The business of the partnership was the buying and letting of residential properties. The properties were acquired in joint names. At the time when the business partnership commenced, Mr Corfield and Ms Howard were also romantically involved and, as I understand it, "partners" in a personal relationship sense too.

11. I refer to the properties as "Partnership Properties". In this case legal title to the properties was vested in the names of Mr Corfield and Ms Howard. A partnership such as that in this case is not a legal entity and cannot hold legal title to real property. There is of course a legal distinction between properties that are held legally on trust for a partnership and which are partnership assets and those which are beneficially owned by partners but used for the purposes of the partnership business. I do not need to decide the strict legal position in this respect in this particular case and the difference in this case would primarily be relevant to creditors of the partnership. I use the term "Partnership Properties" for convenience but do not thereby indicate which of the two ownership structures that I have just identified applied.

12. In his witness statement on this application, Mr Corfield says that he and Ms Howard split as a couple in about 2008 and that he then moved away. Ms Howard thereafter continued to manage the properties and effectively enjoyed the income from them. Legal proceedings seeking a dissolution of the partnership, appropriate accounts and inquiries to wind up the partnership including sale of the Partnership Properties and damages for alleged breaches of duty by Ms Howard (relating to certain management decisions taken by her) were issued, as I have said, by Mr Corfield in May 2018. The proceedings were hotly contested.

13. The proceedings as issued were allocated the number E50NE070. That claim number has since been substituted by a new number to enable the proceedings to be entered into the court's electronic filing system.

14. As is recorded in the Settlement Agreement, at the time that the agreement was entered into the parties were the joint legal owners of some 15 (remaining) Partnership Properties, mainly situated in Heaton, but two of which were in Gateshead.

15. As is clear from a witness statement dated 9 April 2024 of Mr Dominic Martin Cassidy, a partner in the solicitor's firm of Paul Dodds Law, and which is in evidence before me, by the time that the settlement agreement was entered into that firm had already acted on the sale of four of the Partnership Properties, which sales apparently completed between December 2018 and January 2019. As a result Paul Dodds Law was, at the time of the settlement deed, holding net proceeds of sale in relation to such properties. In total therefore, and for relevant purposes, there were 19 Partnership Properties of which four were sold during the course of the proceedings and prior to the making of the Tomlin Order.

The Settlement Agreement: 19 June 2020

16. Mr Corfield suggests in his witness statement that negotiations commenced at the suggestion of the trial Judge. Ms Howard suggests that the initiative was hers. Nothing turns on the point. As regards the process of reaching agreement, it seems that there may have been an agreement in principle reached between the two parties meeting alone and personally first. Whether or not this is the case, and whatever the level of detail agreed between the parties personally, it is clear that the terms of the Tomlin Order and the Settlement Agreement itself were drafted and negotiated between the two Counsel then acting in the case and that final agreement was only reached at about 10pm that night.

17. The Settlement Agreement is comparatively short but has to be considered as a whole. Its terms are as follows:

> "*The parties have reached the following terms in full and final settlement of all claims made between each other whether now or in the future and in settlement of claim no. E50NE070.*
>
> *The Claimant and the Defendant agree as follows:*
>
> *1. The partnership between the Claimant and the Defendant is dissolved and the affairs of the partnership are agreed to be wound up as at 31 March 2019.*
> *2. The Claimant and the Defendant are the joint legal owners of the following properties ("the Properties"):*
>
> [15 properties are then identified by address]
>
> *3. The Defendant shall be entitled to all income from the Properties (including the balance currently standing to the credit of the joint account of the parties no. 81852612 in the sum of £8,112.23) and shall be liable to pay all instalments of mortgage on the Properties to Topaz Rosinca ("the Mortgages") and all other outgoings and expenses arising after 1st April 2019.*
>
> *4. The Defendant will pay to the Claimant the sum of £400,000 and will do so as follows:*

(1) £181,051.92 payable immediately to which end the Defendant and the Claimant will forthwith instruct Paul Dodds Law to transmit the cash standing to their credit, to BakerLaw's Client Account sort code 30-93-20 account number 32982460 reference MR/CORFIELD, and

(2) The balance thereafter by way of the Claimant being paid directly from Paul Dodds Law at least 50% of the net proceeds of sale of each of the Properties; and

(3) If by 31 July 2021—

(a) Any further balance of the said sum of £400,000 remains outstanding; or

(b) The Claimant remains liable under the Mortgages

then the Properties shall be sold by auction at the first Pattinson's Auction thereafter listed without reserve and any balance of the said sum of £400,000 remaining due shall be paid to the Claimant from the net proceeds of sale of the Properties.

5. To the extent that after the sale of all of the Properties there remains outstanding—
(1) any partnership liability existing as at 31 March 2019, and/or
(2) any liability under the Mortgages which existed on 31 March 2019
the Claimant will contribute to the extent of one half of such liability.

6. The Claimant and the Defendant further agree that as from 1st April 2019 their relationship was and remains that of co-owners in equity of the Properties.

7. The Defendant agrees to indemnify the Claimant against any post-31 March 2019 damage and third party claims relating to the Properties or the Partnership.

8. The Defendant agrees to maintain landlord's insurance in respect of the Properties."

18. The settlement agreement was signed by each of Mr Corfield and Ms Howard.

19. The £181,000 odd held by Paul Dodds referred to in clause 4(1) was the balance of the net proceeds of sale of the four properties sold by Paul Dodds (in the sense that that firm handled the legal side of the sales) prior to the date of the settlement agreement.

20. Thereafter, although not according to the timetable laid down by the Settlement Agreement, a further 10 of the original Partnership Properties were sold. In this respect I understand that in about August 2021, as evidenced by an exchange of emails and letters between Ms Howard and Mr Corfield's solicitors, Mr Corfield agreed to a "stay" of the auction under clause 4(3).

21. According to Mr Cassidy, as at the date of his witness statement in May 2024, there remained five of the original 19 Partnership Properties to be sold. After the date of the Tomlin Order a further 10 of the original 19 properties had been sold, making 14 sold in all. The evidence shows that the net proceeds of sale of the 14 Partnership Properties

that had been sold (four prior to the Tomlin Order, and 10 thereafter) had been distributed/retained by Paul Dodds Law as follows:

-Mr Corfield: £401,781.04;

-Ms Howard: £172,084.32;

-retained £235,543.58 (net of interest) and which Mr Corfield will not agree to release to Ms Howard.

22. In the case of sales of Partnership Properties after the Tomlin Order, in at least one case the entire net proceeds of sale had been distributed to Mr Corfield. In other cases, they had been split 50:50 between the parties. Ms Howard says that she gave instructions that 100% of the proceeds of sales after a certain date were to be paid to Mr Corfield to ensure that he received the £400,000 provided for by clause 4 of the settlement agreement more speedily (see clause 4(2) of the Settlement Agreement) but that, for whatever reason, this instruction was not given effect to.

The dispute

23. The dispute between the parties resolves around the effect of clauses 3, 4 and 6 of the Settlement Agreement.

24. Mr Kitson accepts (and asserts) that:-

(a) the beneficial shares of the parties under clause 6 is a 50% beneficial interest each;

(b) Under clause 4(2), the 50% share of the proceeds referred to will reflect Mr Corfield's beneficial interest in any sold property as provided for/confirmed by clause 6.

25. On analysis, the main dispute between the parties is as to the effect of Clause 4: leaving aside the payment of partnership liabilities (and certain mortgage debts under mortgages over the Partnership Properties), is the payment of £400,000 the full monetary and financial entitlement of Mr Corfield under the Settlement Agreement and in respect of any partnership assets/the Partnership Properties? Mr O'Sullivan, for Ms Howard, says that it is. He says that the entire proceeds of sale of the remaining unsold properties as at the date of the settlement agreement fall to be paid to Ms Howard as "income" under clause 3 and that this is subject only to clause 4 and the obligation to ensure that Mr Corfield receives a maximum sum of £400,000 from past and future sales. On this basis he says that clause 6 is meaningless and of no effect. Alternatively, he says that the entitlement under clause 6 is subject to clause 4 and that once the £400,000 is paid (and any liability under clause 4(3)(b) discharged), Mr Corfield's half share interest in the remaining unsold properties comes to an end.

26. Mr Kitson, for Mr Corfield, says that clause 4 is not exhaustive of the financial benefits conferred or retained by Mr Corfield under the settlement agreement. He says that Mr Corfield is entitled both to the £400,000 under clause 4 but also to a half share of the equity in such properties as are from time to time unsold, even after Mr Corfield has received the £400,000 referred to and been discharged from any liability referred to in

clause 4(3)(b). Once Mr Corfield has received £400,000 from the proceeds of sale (past and present) of the "Partnership Properties", it is submitted that Mr Corfield still retains a 50% share in any then unsold Partnership Properties, with an ability to force a sale of the same and receive half the net proceeds thereof.

27. It is important to note that Mr O'Sullivan disavowed any reliance upon the implication of any term into the Settlement Agreement or its rectification and that his case is one based solely on construction of the Settlement Agreement.

28. I should also note that Paul Dodds Law, through Mr Cassidy, identifies that not only is there a "stalemate" between Mr Corfield and Ms Howard as regards the distribution of remaining sums representing the net proceeds of sale of those "Partnership Properties" which have been sold but that there are concerns regarding receipt of instructions in the future regarding the sale of the remaining five "Partnership Properties".

The Law: Construction of agreements

29. First of all, as regards enforcement of a Tomlin order, it was common ground that "enforcement" can include the seeking of declaratory relief as to the construction (or meaning and effect) of the relevant settlement agreement. In *Ali Gurgur v Amanda Rees* [2021] EWHC 2181 (Ch) Bacon J said:

> *"[31] In my judgment it is clear from the case-law that the court does have jurisdiction to interpret a settlement agreement in a Tomlin order, on an application by one of the parties to the agreement for a declaration as to the meaning and effect of one or more provisions of that agreement. The standard provision in a Tomlin order makes clear that the stay operates except for the purpose of carrying into effect the terms of the settlement agreement. An application for a declaration by one of the parties seeking to resolve a dispute as to the effect of one of the provisions of the settlement agreement is an application made for the purpose of carrying into effect the terms of the agreement.*
>
> *[32] It may be that in most cases any declaration as to interpretation will indeed be sought as part and parcel of an application to enforce a specific provision of the agreement."*

30. As regards the principles of contractual interpretation I was referred to a number of the cases customarily produced when questions of contractual interpretation arise. I did not detect any difference of principle between Counsel on the applicable law in this respect. For present purposes, therefore, it suffices to set out a short-hand summary of the principles applicable to commercial contracts as revisited in recent years by a number of House of Lords and Supreme Court cases. Such summary has helpfully been set out by Carr LJ (as she then was) in *Network Rail Infrastructure Ltd v ABC Electrification Ltd* [2020] EWCA Civ 1645 ("Network Rail") at paragraphs [18] and [19], which I gratefully adopt:

> "*[18] A simple distillation, so far as material for present purposes, can be set out uncontroversially as follows:*
>
> *(1) When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the*

background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. It does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions;
(2) The reliance placed in some cases on commercial common sense and surrounding circumstances should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision;
(3) When it comes to considering the centrally relevant words to be interpreted, the clearer the natural meaning, the more difficult it is to justify departing from it. The less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning;
(4) Commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made;
(5) While commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party;
(6) When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time the contract was made, and which were known or reasonably available to both parties.

[19] Thus the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. This is not a literalist exercise; the court must consider the contract as a whole and, depending on the nature, formality, and quality of drafting of the contract, give more or less weight

> *to elements of the wider context in reaching its view as to that objective meaning. The interpretative exercise is a unitary one involving an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences investigated*."

31. In *Wood v Capita Insurance Services Ltd* [2017] UKSC 24 Lord Hodge said:

> *"[13] Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. The correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example because of their informality, brevity or the absence of skilled professional assistance. But negotiators of complex formal contracts may often not achieve a logical and coherent text because of, for example, the conflicting aims of the parties, failures of communication, differing drafting practices, or deadlines which require the parties to compromise in order to reach agreement. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. The iterative process, of which Lord Mance JSC spoke in Sigma Finance Corpn [2010] 1 ALL ER 571, para 12, assists the lawyer or judge to ascertain the objective meaning of the disputed provisions.*"

32. Mr O'Sullivan referred me to Lord Steyn's summary of the principles of construction applicable to settlements contained in (or, as it would now include, referred to in) a Tomlin order as set out in *Sirius International Insurance Company (Publ) v FAI General Insurance Ltd* [2004] UKHGL 54. It is clear that the general principles of construction apply to commercial contracts entered into in reaching settlements given effect to by Tomlin order, as much as any other commercial agreements. I prefer to rely upon the more recent summary of Carr LJ which takes account of more recent decisions, after 2004, of the highest courts. For the same reason I do not rely solely on, or quote extensively from, Lord Hoffman's speech in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 All ER 98 at [114]-[115], which has been the subject of further comment in later authorities, which passages were also cited to me by Mr O'Sullivan.

33. It is trite law that pre-contractual negotiations are inadmissible as evidence in construing a document, save where they explain the genesis and objective aim of the transaction or identify the meaning of a descriptive term or establish relevant facts known to the parties at the time: see the principles set out by Leggatt LJ in *Merthyr (South Wales) Limited v Merthyr Tydfil County Borough Council* [2019] EWCA Civ 526 at [51]-[55] and, more recently, by Newey LJ in *Schofield v Smith* [2022] EWCA Civ 824 at [22]-[27]. None of the evidence falls within the exceptions that I have identified.

34. Furthermore, as regards subsequent conduct, it is also well established that, save for limited exceptions (none of which applies here and as to which see *Chitty On Contracts* paragraph 16-061) and that, as that paragraph says:

> " *The general rule is that evidence of conduct subsequent to the making of a contract is not admissible for the purpose of interpreting the contract. The general rule, in its modern form, was established by the House of Lords in James Miller & Partners Ltd v Whitworth Street Estates (Manchester) Ltd [1970] AC 583 where it was held that "... it is not legitimate to use as an aid in the construction of the contract anything which the parties said or did after it was made. Otherwise one might have the result that a contract meant one thing the day it was signed, but by reason of subsequent events meant something different a month or a year later." (at 603)."*

35. In this case, Ms Howard's witness statement contains a great deal of evidence about the negotiations and her subjective intention, as well as what Mr Corfield said at various times after the settlement agreement had been entered into in support of, or in the context of, various claims made by him to more than the £400,000 referred to in clause 4. This evidence is inadmissible and irrelevant.

Analysis of the Settlement Agreement

36. First of all, it is clear from the Settlement Agreement taken as a whole that it is directed at agreeing, and giving effect to an agreement that the partnership be dissolved and wound up as at 31 March 2019 (Clause 1). To that end Mr Corfield remains liable as to one half for partnership liabilities incurred prior to the dissolution date, including one half of any liability under mortgages over the Partnership Properties, to the extent such liabilities remain after the sale of all the Partnership Properties (clause 5). The Partnership Properties are to be sold (clauses 4 and 5). It seems implicit that partnership liabilities will be paid from the proceeds of sale of the Partnership Properties.

37. Ms Howard is, post dissolution date and pending sale, to be responsible for managing the Properties and the partnership business and is to pay all outgoings and expenses arising after the dissolution date (clause 3) and is to indemnify Mr Corfield against post dissolution damage and third party claims relating to the Partnership Properties (clause 7). However, she receives all post dissolution income from the properties as well as that represented by the balance standing to the credit of a joint bank account which may be viewed as "pre dissolution" income (see clause 3).

38. Turning in more detail to clause 4, the headline point is that Mr Corfield is to receive £400,000 (clause 4 opening) and that such sum is to come from (a) the sum of £181,000 odd held by Paul Dodds Law and representing the remaining net proceeds of sale of four of the Partnership Properties (Clause 4(1)); (b) the receipt of at least 50% of the net proceeds of sale of each property (Clause 4(2) and that if (c) by 31 July 2021 there remains a balance owing in respect of the £400,000 or he remains liable under any mortgage of the Partnership Properties, then the same shall be sold at auction and the balance of the £400,000 shall be paid to him from the net proceeds of sale (Clause 4(3)).

39. It seems to me clear that clause 4(3) is an "acceleration clause" in the sense of accelerating the sale of the properties (now by auction), if by the given date Mr Corfield has not received the full amount of £400,000 or he remains liable under any pre-

dissolution mortgage. Clearly, he was not entitled to receive any more of the net proceeds of sale than the £400,000. Therefore any "surplus" not needed to be paid to him to ensure he receives £400,000 in total, would be distributed to Ms Howard (as the only other person possibly entitled).

40. In my judgment it makes no sense and contradicts the clear terms of clause 4 itself if Clause 4 were to be read with clause 6 as meaning that he would be entitled (a) (from at least his own half interest in the proceeds of sale flowing from clause 5) a sum to ensure that the total sum received by him from the net proceeds of sale of all the "Partnership Properties" was £400,000 and (b) in addition, any further sums from the net proceeds (if any) representing his half share of the net proceeds of sale of Partnership Properties sold after he had received the £400,000 in total or the balance of a half share of the net proceeds if receipt of less than half a share brought him to the position where he had received £400,000 in total.

41. In my judgment, clause 6 (which covers the position from 1 April 2019) places Mr Corfield in a position where, as co-owner, he has rights in relation to the Partnership Properties which essentially protect his position so that he receives (a) up to half the net proceeds of sale of each property (up to an overall maximum, as regards the net sale proceeds of all of the properties, of £400,000 in all) and (b) the discharge of all pre-dissolution mortgages (under which he would be liable) out of the net proceeds. In a loose, layman's sense, the ownership interest secures his rights under Clause 4 so long as it remains in operation.

42. Of course, in the event there was negative equity in a particular property or in the event property values went down that might mean that he would, at the end of the day, have to receive more than 50% of the net proceeds of a property to ensure he received the overall £400,000. Further, if there was negative equity in a Partnership Property over which there was a third party pre-dissolution mortgage, that might mean net sale proceeds of another Partnership Property would have to be used in discharging his liability under the mortgage in question. As co-owner he would have control over the sale process to ensure that he received (a) the full £400,000 and (b) the discharge of any liability of his under all pre-dissolution mortgages over any of the Properties.

43. It also seems to be the case that he is entitled to have (other) partnership liabilities discharged from the net sale proceeds of the Partnership Properties as well as having the benefit of the indemnity under clause 5 if there remain any outstanding liabilities post sale. (I note however that I have not heard argument on this point).

44. However, once Mr Corfield has received the full £400,000 provided for by clause 4 from the net sale proceeds of properties, and been discharged from all mortgage liabilities under pre-dissolution mortgages and (in my preliminary view) all other partnership liabilities have been discharged, it seems to me that the Settlement Agreement is clear that that is the limit of his entitlement as regards the Partnership Properties under Clause 4. Clause 6 must, it seems to me, be read as being subject to clause 4 and that means that his half share beneficial interest in any remaining unsold Partnership Property (or in the net proceeds of sale of any Partnership Property), will cease once his entitlement under clause 4 has been met.

45. This view is strengthened by Clause 4(2). That sub-clause envisages that before all the Partnership Properties are sold, on any particular sale of a Partnership Property (as in

fact occurred on at least one occasion) Mr Corfield might receive not just his half share of the net sale proceeds of that property but, if Ms Howard agreed, some or all of her 50% share of the net proceeds. It is difficult to see why Ms Howard would agree to increase Mr Corfield's half share of the net proceeds in this way if, as Mr Kitson contends, the effect would be that she would end up receiving only 50% of the net sale proceeds of any remaining unsold Partnership Properties (after discharge of all pre-dissolution partnership liabilities, including mortgage liabilities), in the event that Mr Corfield were to receive in total £400,000 from other sales of Partnership Properties. In my judgment, in allowing for Mr Corfield to receive more than 50% of the net sale proceeds of a property, if Ms Howard so agreed, clause 4(2) is directed, primarily at least, to accelerating the time when Mr Corfield's entitlement under the Settlement Agreement is met and thus bringing the clean break achieved by dissolution and winding up to an earlier conclusion.

46. I should also note that it was common ground that Clause 4 ensures that Mr Corfield receives at least £400,000 from the net sale proceeds of the Partnership Properties even if they were to have a value where the net proceeds in combination were (say) less than £800,000 and his half interest therefore worth less than £400,000. However, for the reasons that I have given, I reject Mr Kitson's argument that this is the sole purpose and effect of clause 4 such that, even if Mr Corfield received £400,000, he would receive more if the overall net sale proceeds exceeded £800,000.

47. Mr Corfield has received his £400,000 from the net proceeds of sale of Partnership Properties. It is unclear to me on the facts as to whether (a) there remain any outstanding pre-dissolution created mortgages which need to be discharged by way of sale and/or (b) whether there remain any other outstanding partnership liabilities which would (in my preliminary view) have to be met from net proceeds of sale of Partnership Properties, so far as available. If there are not then it would appear that Mr Corfield has no further entitlement as regards the sale proceeds of Partnership Properties. If there are no such liabilities then the only remaining question would be whether any (or all) unsold Partnership Properties have to be sold (as a result of clause 4(3) having already been activated), even though Mr Corfield now has no practical interest in the sale, he having received his financial entitlements under clause 4. These refinements were not discussed before me and may not arise on the facts.

If Clause 4 limits entitlement of Mr Corfield in relation to the Partnership Properties, how is this given effect to under the Settlement Agreement?

48. If Mr Corfield's entitlement is limited, as I have held, under clause 4 then how does clause 4 fit with the other clauses of the Settlement Agreement?

49. Mr O'Sullivan's primary argument is that Clause 3 entitles Ms Howard to receive net sale proceeds over and above any sum needed to meet Mr Corfield's Clause 4 entitlement. He says that this is as a result of the words "all income from the Properties" in clause 3. Clause 3, he submits, entitles Ms Howard to receive all the net sale proceeds of the Properties (because such net sale proceeds are, he says, "income") and is only subject to clause 4 which prevents her receiving sums to the extent that clause 4 confers entitlement on Mr Corfield in relation to the same. I disagree.

50. In my judgment, as submitted by Mr Kitson, the word "income" is usually to be distinguished from "capital". Sale proceeds of a property are not usually referred to as

"income" from the property. This clause was drafted by lawyers, which means this interpretation is more likely. Moreover clause 3 is clearly dealing with income and expenditure in relation to the Properties after the dissolution date. Finally, there is no need for clause 3 to provide that Ms Howard is entitled to net proceeds of sale once Mr Corfield's entitlement under clause 4 is met: that is implicit in clause 4 itself. Further, this submission of Mr O'Sullivan fails to deal satisfactorily with clause 6 which Mr O'Sullivan, in his skeleton argument, dismissed as having "no meaningful effect". He says that it "states the obvious" but seems to envisage that the clause has no practical effect (other than possibly as giving rise to a right in Mr Corfield to have a say in the sale of the partnership properties) on the basis that clause 4 (and he says 3, in the form interpreted by him) overrides it.

51. In my judgment, clause 6 is to be read as subject to clause 4 (as I have interpreted clause 4). That means that any beneficial interest of Mr Corfield in a Partnership Property (and its sale proceeds) is extinguished once Mr Corfield's entitlements under clause 4 are met. (In this respect I leave open the possibility that this entitlement includes a sale of all remaining Partnership Properties under clause 4(3)). The result is that the Settlement Agreement creates or varies the beneficial interest of Mr Corfield in the Partnership Properties and/or their proceeds of sale so that his interest determines in certain events.

52. It was said by Mr Kitson that if clause 4 is to be construed in the way that I have construed it, then another possibility is that the Settlement Agreement might give rise to an obligation on Mr Corfield to transfer his beneficial interest. The uncertainty as to which was intended both prevent implication of an implied term (though not argued for by Mr O'Sullivan) and point against the construction of clause 4 that I have decided upon. I disagree. I do not have to deal with implied terms but it seems to me clear that the Settlement Agreement was intended to deal comprehensively with the position. A determinable beneficial interest does that. An obligation to transfer a beneficial interest at a future date does not. Further, the latter is more likely to need an implied term whereas a determinable interest is, in my judgment, easier to achieve as a matter of construction.

53. Finally, and looking at the bigger picture, the construction that I consider correct seems to me to carry the benefit of assisting in a "clean break" rather than, as was said in the course of the hearing before me, leaving the former partners "joined at the hip".

Formalities requirements

54. I heard a certain amount of argument as to the effects of s2 of the Law Reform (Miscellaneous Provisions) Act 1989 and s53(1)(b), (c) of the Law of Property Act 1925. As I understood it, the argument was mainly based on the premise that there would need to be a further written instrument to effect the termination of Mr Corfield's beneficial interest in the Partnership Properties once the relevant elements of clause 4 were complied with and that the Settlement Agreement does not provide for such further transaction. As I have held that the interest automatically determines once his clause 4 entitlements are met, I do not agree a further document is necessary. The Settlement Agreement, on its true construction, effects this change to his beneficial interest to make it terminable.

55. Section 2 of the 1989 requires contracts for the sale or other disposition of an interest in land to be made in writing, incorporating all the terms expressly agreed and signed by or on behalf of each party to the contract. To the extent that that section is engaged its terms are complied with.

56. Insofar as the Settlement Agreement has the effect of being a disposition of an equitable interest in land (by virtue of the absolute beneficial interest of Mr Corfield becoming determinable such that Ms Howard contingently acquires a greater beneficial interest), s53(1)(c) Law of Property Act 1925 is complied with as the Settlement Agreement giving effect to the same is "in writing signed by the person disposing of the same".

57. Insofar as the Settlement Agreement is regarded as being a declaration of trust of land by Mr Corfield and Ms Howard, again it is in writing and signed by each so s53(1)(b) of the Law of Property Act 1925, so far as applicable, is complied with.

58. Accordingly, I do not see that any statutory formalities requirements to effect the Settlement Agreement as I have construed it have not been complied with.

Overpayment of £1,781.04

59. As I have already noted, Mr Corfield has in fact been paid more than £400,000 in total from the net proceeds of sale of the Partnership Properties. The excess, £1,781.04 seems to have been paid by mistake. At the time there was a known dispute as to whether Mr Corfield was entitled to more than £400,000.

60. As I understood it, in the event that I found, as a matter of construction, that Mr Corfield is only entitled to £400,000 then an order for payment by Mr Corfield of £1,781.04 to Ms Howard is not resisted. I would make that order. There will have to be further argument as to any interest on such sum.

Orders regarding sale

61. Orders were sought regarding co-operation of Mr Corfield in any sale process of remaining Partnership Properties through Paul Dodds Law. If this matter cannot be agreed then I will need to hear further argument. One possibility is that, dependent on the facts, he has no further beneficial interest in the remaining Partnership Properties and Paul Dodds Law can simply act on the instructions of Ms Howard as (now) 100% beneficial owner of the same. Alternatively, it may be that Mr Corfield retains a beneficial interest unless and until the sale of all unsold Partnership Properties is concluded, but that his interest does not extend to any part of the sale proceeds. I would think the court has power not just to order sale pursuant to the Settlement Agreement but to control the sale, either under the Contract and/or by virtue of the Trusts of Land and Appointment of Trustees Act 1996, but I will need to hear further argument if there is an issue on this point.

Conclusion

62. Under the Settlement Agreement, Mr Corfield's interest in the Partnership Properties and/or their net proceeds of sale determines once his entitlements under clause 4 are met. In particular, he is not entitled to a distribution of more than £400,000 overall from the proceeds of sales of the Partnership Properties.

63. The parties should submit a draft order to give effect to this judgment (or a draft setting out clearly what they have agreed and what they have not agreed and, in the latter case, identifying clearly what is unagreed and which party contends for what wording) before it is due to be formally handed down. If necessary there can be a further short remote hearing to determine the precise form of order. If no draft order is submitted by 4pm on 7 November 2024 the court will proceed to fix a further remote hearing for the purposes of settling the form of order.