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No. 2014 No. 129567

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

AB (A PERSON UNDER A DISABILITY)

Plaintiff;

-and-

**CMcD, EB AND FG
AS PERSONAL REPRESENTATIVES OF HB (DECEASED)**

Defendants.

HUDDLESTON J

[1] This case involves a dispute about the Estate of the late [HB] (“the Deceased”). The Deceased intestate died on 23 July 2008 without spouse or issue. The details of the parties have been anonymised on the application of the Official Solicitor given the fact that the Plaintiff is a vulnerable adult and is acting through the Official Solicitor as he is under a disability.

[2] He was one of ten brothers, the children of the late [BJB] and [IB]. The Plaintiff is the Deceased’s sibling. The other brothers were [JB] (now deceased); [KB] (now deceased); [LB] (now deceased); [MB], [NB], [OB] [PB] and [QB].

[3] The defendants to the present action are the Deceased’s nieces – the children of his brother [QB] – and the people who have extracted a grant of representation by way of letters of administration on 24 July 2014. In their role as Personal Representatives they have sought to administer the Estate of the Deceased and to that end have rendered an inheritance tax account; paid the inheritance due on the basis of that account and sold the majority of the assets which were held in the name of the Deceased at the date of death. On that basis the Personal Representatives have assessed the Estate as having an approximate value of c£2.0m upon which they have paid inheritance tax of c£550,000 (after reliefs). The underlying basis upon which they have proceeded is that they assert that the Estate is comprised of assets

which were held in the Deceased's name at the date of death which comprise, in the main, the following:

- (a) His dwelling house at [X];
- (b) Investment properties as follows:
 - (i) A;
 - (ii) B;
 - (iii) C;
 - (iv) D;
 - (v) E;
 - (vi) F;
 - (vii) G;
 - (viii) H;
 - (ix) I;
 - (x) J;
 - (xi) K.
- (c) The dwelling house at [Y] in which the Plaintiff has always lived.

[4] The Plaintiff's case is that the Deceased's Estate is not as extensive as the Personal Representatives allege and, more particularly, that it ignores his legal and/or beneficial interest in some or all of those assets.

[5] In the first instance he lays claim to the property in which he lives at [Y] which is registered in the name of the Deceased. Further, he claims to have been a business partner of the Deceased and therefore entitled to 50% of all of the remaining assets.

[6] As a brief history, the [B] family were born and reared in the home at [Y] ("the Dwelling"). The Dwelling was bought by the Deceased's late father [BJB] and was registered in his sole name. He lived there with his wife and children - most latterly with the Plaintiff; the Deceased and their younger brother [KB] - the other brothers having left the Dwelling at various stages as they grew up and formed their own lives and families elsewhere.

[7] In or about 1983 the family left the Dwelling, which would appear to be a largely unmodernised rural property, and moved into an NIHE rented property at [L]. The Plaintiff, however, continued to live in the Dwelling. After his father's death, title to the Dwelling passed to the Plaintiff's mother on the father's intestacy. She in turn transferred title to the Dwelling to the Deceased in or about 1990. It has an approximate current market value of £130,000.

[8] BJB was, by profession, a wheelwright and general builder. His son, the Plaintiff, continued that trade together with, from approximately 1967, the assistance of the Deceased who suffered from polio. From the evidence which the court received the two brothers worked together from 1967 forwards in the purchase of small sites, construction of houses and general building and construction work. It would seem that they completed a number of developments, sometimes retaining, as they completed a development, one or two properties thus building up an investment portfolio. The houses were let to private tenants. Agricultural land was also acquired and let out on a conacre basis. On the evidence which the court received it would seem that the Plaintiff undertook most of the development and construction work whilst the Deceased undertook most of the administration relating to the business. The Plaintiff's case is, in part, that the brothers operated a partnership with all of the decisions being undertaken jointly and all of the revenue arising from their endeavours being joint revenue and, therefore, that all the investment properties, whilst being registered in the sole name of the Deceased, accrued beneficially to the brothers in equal shares in their capacity as equal partners in the business.

[9] It is fair to say that record keeping, accounts and documentation pertaining to the relationship between the two brothers is scant. The court was provided with some information referring variously to "B Brothers" and/or various derivations of that name. This ranged from a letter of claim in respect of an occupiers' liability issue (dated 21 May 1999); sales invoices for the sale of some of the properties they had built (from Mortons Chartered Surveyors dated 30 April 1983); their own letter-headed invoices (in the name of B Brothers); farm registration details (for the agricultural land) (in the name of the Plaintiff and the Deceased); VAT registration documentation (in the name of B Brothers); NHBC registration (in the name of B Brothers). As I say the documentary evidence which was furnished is quite wide-ranging but largely historic.

[10] There also appears to have been a joint bank account in the names of the Plaintiff and the Deceased (Danske bank account ending 6295) but with very limited information as to how it was used. At one point it had a credit of £65,000.

[11] As I have said the majority of the properties were registered in the name of the Deceased. One of those (the lands comprised in folio [123], Co Londonderry, otherwise [M Farm] with a current value of c£240,000) was initially acquired in the

joint names of the two brothers (and then as tenants in common) but was transferred back into the Deceased's sole name in or about May 1997.

[12] It is probably relevant to note, at this point, that in October 1997 the Plaintiff was adjudicated bankrupt. There is no information before the court as to who the creditor might have been although the indications are that the bankruptcy might have been pursued at the suit of HMRC. In those proceedings the Plaintiff appears to have been described as a "sub-contractor" - but there is no evidence as to how that description was arrived at.

[13] In summary, therefore, the court has not been furnished with any of the documents which it might normally expect in a case where a partnership is alleged. There are no accounts. There are no tax records and indeed since 2001 the Deceased had been categorised as unfit to work and in receipt of benefits and since 2004 the Plaintiff has also been in receipt of benefits.

[14] As far as the property transactions are concerned the solicitor who dealt with the Plaintiff and the Deceased, Mr B Brown of Martin, King, French and Ingram (and of whom the Plaintiff says that he "*knew of their relationship*") is also dead. Unfortunately, given the passage of time very few of his background files were available. Similarly, investigations from the local accountants have produced very little assistance in terms of the operations pertaining to the Business. It is fair to say that in large part this is due to the fact that, on the evidence to the court, the brothers probably ceased to be active in relation to business activities in or around the late 80s or early 90s.

[15] The other reason for the lack of information is in large part due to the fact that the Plaintiff is operating under a disability. He was represented in the proceedings by the Official Solicitor - it being accepted, upon medical evidence, that he was no longer capable of acting on his own behalf.

[16] In terms of the administration of the Estate, upon the evidence before the court it would seem that the Plaintiff did make attempts to administer his brother's Estate in his capacity as brother and one of the next of kin. In his own affidavit dated 18 May 2016 (it being furnished at the direction of the court in response to initial claims from the Personal Representatives) it seems that the Plaintiff did initially speak to W B Thompson, solicitors concerning the administration of his brother's Estate but that matters simply did not progress. Those attempts would appear to have ceased in or about 2010. There followed a lapse before the Personal Representatives took up the mantle and instructed Hunt and Co to act on the Estate's behalf.

[17] In the face of proceedings brought by the Personal Representatives for possession of the Dwelling and alleging intermeddling with the Estate the Plaintiff did start to defend his position in the face of that litigation. He instructed Kelly and Corr and swore two affidavits - both as directed by the court - to explain his

position. The first dated 18 May 2016 (mentioned above) attempts to explain the Plaintiff's initial involvement in the administration of the Estate of the Deceased. It denies inter-meddling (as alleged by the Personal Representatives) and describes a "drifting away" from Mr Thompson due to inertia and depression on the part of the Plaintiff. It alleges an "aggressive and bullying attitude" on the part of the Personal Representatives - particularly around a forced entry by the latter into a shed at the Dwelling in which business tools were kept. The second affidavit sworn by the Plaintiff (dated 11 June 2016) was again court directed and seeks to explain some of the transactions which occurred in relation to the assets held in the Deceased's name - most particularly the collection of rent from the investment properties and the operation of what, appears to the court, to have been an attempt to set up an administration account at Ulster Bank.

[18] At the instance of Madam Justice McBride at an earlier stage of the proceedings medical evidence was sought on the back of which the Plaintiff was deemed unable to conduct litigation and, as a result, these proceedings were taken over by the Official Solicitor. The litigation is now conducted by and on the instructions of Mrs McCann of that Office who informed the court that the Plaintiff was not fit to attend court or give evidence or indeed provide much by way of further clarity as to how the brothers transacted their business or indeed his involvement in his brother's affairs after his death. There is no doubt that the lack of personal involvement has not assisted in the light of the pleaded case.

The Plaintiff's Case

In relation to the Dwelling

[19] Paragraph [7] of the Statement of Claim sets out the Plaintiff's position in relation to the Dwelling which he occupies. It states:

"The Plaintiff remained in and continues to remain in the premises at [Y address]. He was assured by his parents and thereafter by the deceased that those premises were his. The Plaintiff has expended monies on foot of such assurances to include the reinstatement of the access, construction of outbuildings for the purposes of storing machinery and construction tools used in connection with the above mentioned business, development enterprise and rental properties."

[20] The litigation that the Plaintiff has, in part, pursued against the Personal Representatives is to defend the eviction proceedings which the Personal Representatives have brought against the Plaintiff for possession of that dwelling.

[21] I have set out above the history of the ownership of the Dwelling - namely that it was acquired by the Plaintiff's father, that the family was brought up in it; that the Plaintiff continued to live in it when they moved to the NIHE property in 1983

and, indeed, continued to live in it at the date of the trial. Title, however, at the date of death was vested in the Deceased.

[22] What the Plaintiff now asserts is that the Dwelling should be his. The court heard evidence from three of his surviving brothers, [MB], [OB] and [PB]. It also received a copy letter written to Hunt & Co on behalf of [NB] renouncing any interest in the property. Each witness who appeared was entirely reliable and cogent and each expressed the same view namely (to use PB's words) "*we all assumed [the Dwelling] to be [the Plaintiff's] home and he stayed on there. We were all quite happy with that ...*". All of those declarations are against the interest in the Dwelling that would accrue to them on intestacy.

[23] I do not understand the Plaintiff to make the case (as he does below) that the Dwelling is a partnership asset. Rather from the submissions which the court received the argument made is that the Plaintiff has a beneficial interest in it based on proprietary estoppel. For completeness, there is no assertion that a title has been acquired by adverse possession.

[24] Cases based on proprietary estoppel requires the person asserting it to establish on a balance of probabilities that:

- (a) There was a representation made;
- (b) That he or she relied upon it; and
- (c) That the reliance was to his or her detriment.

[See Snell on Equity at Para 12.032 et seq.]

[25] As I have said the three surviving brothers who appeared all gave evidence of their impression that the Plaintiff should be allowed to remain in situ and were variously "*disgusted*" at the attempts on the Personal Representatives' part to evict him. None of the brothers gave evidence, however, as to their knowledge of an actual promise made to the Plaintiff. What each of them spoke of was their impression as to how matters had been left. That is not, however, surprising on the facts. All of them had left the subject property by the time that their parents moved to the Housing Executive property in/around 1983 leaving the Plaintiff in situ. The impression the court gets of the family - including both the Plaintiff and the Deceased - is that they were hardworking but essentially private people. It is equally clear that that they did not deal well with formality - the lack of available records or even adherence to basic administration is evidence of that. The question, however, which the court must assess is whether the three elements which need to be satisfied for proprietary estoppel to be established can be met. The Personal Representatives through their counsel, Mr Orr QC and Ms Grattan say that they cannot. Counsel for the Plaintiff, Mr Foster, relies on the "*direct and undisputed*

evidence" of [OB], [PB], [NB] and [MB] which he says are all 'ad idem' in respect of the "Plaintiff's occupation of the house".

[26] On the first element, the question of a representation, (and for the reasons given) I find that there was no positive representation. Indeed, as between the Deceased and the Plaintiff I do not think, from the evidence before me, frankly that the issue would ever have arisen. A representation, however, need not be an oral one - it can be implied from a course of conduct [see *Thorner v Major* [2009] UKHL 18] particularly where, in that case as in this, one can easily imagine the interactions (or lack) thereof of two "taciturn and uncommunicative" men. This is often described as the acquiescence based principle as espoused in *The Earl of Oxford's Case* [1615] Chan Report; *Ramsden v Dyson* [1866] IHL and, more recently, in *Fisher v Brooker* [2009] UKHL 41. On the facts here I find that the act of leaving the Plaintiff in the Dwelling when the family decamped and went to live in a NIHE property was in itself an implied representation in that same vein i.e. that he would have somewhere to live for the rest of his life. The court can equally imply that that representation was bolstered when [IB] (as the beneficiary of her husband's estate) transferred the Dwelling to the Deceased. The impression one gets from the evidence of the surviving brothers is by that stage the Deceased was acknowledged as the family protector and the person best able to administer the legal and business side of interactions on behalf of his brother.

[27] It equally can be implied that the representation originally made by the parents was, if not reaffirmed, certainly acquiesced in by the Deceased who (a) allowed the Plaintiff to live in the Dwelling without question; (b) allowed him to improve the access to the Dwelling and to construct outbuildings upon it for the use of the business; (c) was happy to use the Dwelling as a correspondence address for the Business (as referenced in the documents referred at paragraph [9] above) and in effect allowed the status quo (at least as far as the Plaintiff was concerned) to continue. Based on that course of conduct and acceptance one can see that the Plaintiff did suffer a detriment by relying upon it. That is evidenced by the fact that he expended money both on the outbuildings and on the improvement of the access to the Dwelling - a Dwelling he continued to maintain to a standard that suited him - but, moreover, in that he did not seek to establish his home elsewhere - unlike all the remainder of his siblings. He continued to live in the house; use it and pay the outgoings in relation to it as if it were his own.

[28] It seems that everyone - including the Deceased - appears to have been satisfied to allow him to live in the Dwelling in what appears to have been a very basic lifestyle. Whilst this is not the strongest case ever to come before the courts, on the balance of probabilities, the court finds that the elements of proprietary estoppel are established on the facts. In that regard the court was referred to the helpful decision of Stephens J (as he then was) in *McDermott and Another v McDermott* [2008] NICH 5 and through it to the judgment in *Gillett v Holt et al* [2000] 2 All ER at 289 when the following passages were set out:

“The fundamental principle that equity is concerned to prevent unconscionable conduct permeates all elements of the doctrine. In the end the court must look at the matter in the round.”

And further:

“... 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. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that 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.” [Emphasis added]

That certainly resonates with the present situation. In that regard the court is drawn to the evidence of [OB] who put it thus:

“[He] could not see how a man who lived there all his days would be expected to leave.”

[29] Whilst the court has accepted the equity of the Plaintiff’s claim the court must also assess how best that equity may be met on the facts of the case. In other words what is the level of equity or entitlement which accrues to the Plaintiff? In this regard the court’s attention was drawn to Stephens J in *McKenna v McConnell Deceased* [2008] NICH 17 at paragraph [20] which (although obiter) is in the following terms:

*“Accordingly if the Plaintiff relied on a proprietary estoppel then **in assessing the extent of the Plaintiff’s beneficial interest I would look at the circumstances to decide in what way the equity can be satisfied but to approach the task with caution in order to achieve the minimum equity to do justice to the plaintiff.** In approaching that task in this case I would take a range of factors into account including the other claims legal and moral on the estate of the deceased. I would bear in mind that **satisfying the equity is different from satisfying the expectation.** However, if as here I find that there was an agreement giving rise to a constructive trust then I am obliged to give effect to that agreement.”*
[Emphasis added]

[30] Taking all the factors which are before the court in the present case into account I find that the Plaintiff should, in satisfaction of his equity, be entitled to a

life interest in the Dwelling. I say that for that is what I believe, on the facts of the case, was the interest that both the Plaintiff's parents and the Deceased would have felt was the minimum that he should have. That view is echoed by his surviving brothers both in this court and in the written representations which they have made on his behalf in the correspondence passing between their solicitor and the solicitors charged with the administration of the Estate.

[31] Given the vulnerable position of the Plaintiff we have very little evidence to suggest what exactly he thought he was entitled to. We heard evidence from Mr J Allen of Land and Property Services (LPS) who explained that the Plaintiff is in receipt of Rates Relief which, it was confirmed to the court, is only available to those people who certify themselves as being "*owner/occupiers*". To avail of the relief the Plaintiff had submitted a Declaration of Ownership as opposed to submitting a claim for housing benefit - which is the benefit more appropriate where a ratepayer is the occupier of a rented property. As against that there was evidence, in the form of the Plaintiff's application for benefits, to which the court's attention was also drawn. In that regard we heard from Mr Paul Hagan of the Department of Work and Pensions who confirmed that from 2004 forward the Plaintiff completed applications for benefits in which he declared that he owned no assets whatsoever. Those are, obviously, polar positions. One cannot help but form the view that the Plaintiff may have been slightly opportunistic in respect of his applications for both forms of assistance, but in categorising his interest as a life interest that would, the court believes, be consistent with what he himself declared when more able to do so and achieves equity.

[32] On the facts, therefore, I conclude:

- (a) That he did not own the Dwelling;
- (b) That although he did not own it he was entitled to live there rent free for the duration of his life based on the implied representations made by, firstly, his parents and then the Deceased - either implicitly or acquiesced in through their course of conduct;
- (c) That he relied upon those representations to his detriment; and
- (d) That such an interest does not give him legal ownership per se but that a finding of a life interest is sufficient to satisfy the equity that arises and is yet consistent with the approach that the vulnerable Plaintiff himself adopted in the assertions which he made to the Department of Work and Pensions in relation to his benefits applications in the years 2004 onwards.

The Partnership Claim

[33] The Plaintiff in his Writ of Summons and Statement of Claim also seeks a Declaration that he is entitled to a beneficial interest in all of the premises which

were held in the name of his late brother. The properties involved are those which are listed at paragraph 3(b) above together with the building equipment and tools located in sheds at the Dwelling which have been sold but not yet been separately accounted for.

[34] The question of whether a partnership existed between the two brothers takes us inevitably to section 1(1) of the Partnership Act 1890 which provides as follows:

“Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.”

The burden of proof rests with the Plaintiff to establish those fundamentals i.e. that:

- (i) there was business carried on between them; and
- (ii) it was with a view to profit.

[35] The Plaintiff’s affidavit of 18 May 2016 – in response to the potential eviction of tenants from houses – avers that “[he] [the Plaintiff] felt that this was a dishonourable thing to do especially since the **houses were half mine**”. Each of the brothers who gave evidence to the court did so on the basis that the Plaintiff and the Deceased worked together. [OB] said that “[they] were partners” in the business of “house construction and development of properties”. He also indicated that they were “hard grafters” and that they “started out together and worked all their days together”. The brothers’ evidence was that to some extent the Plaintiff and the Deceased worked together until they lost interest in business activities in the 1980s.

[36] There is no doubt that the brothers all feel that there was a partnership in existence between the Plaintiff and the Deceased and, as those otherwise entitled on the Deceased’s intestacy to inherit, one must treat their evidence with respect. Beyond that, in terms of objective evidence of the existence of a partnership, I refer again to the miscellany of documents which were presented to the court consisting of VAT records, NHBC records, various personal injury claims, land registration with the Department of Agriculture for Northern Ireland in relation to the claiming of subsidies etc. All of those documents were historic and raised the spectre of a partnership but, as I have said, there is very little by way of the cogent evidence which a court would expect to demonstrate that such a partnership existed. There are no partnership accounts; there are no tax records; there is no real explanation as to how funds were generated or how they were spent. The Plaintiff’s case is rather a request that the court impute a partnership on what is very scant evidence indeed. In terms of the documentation that was presented, the more material aspects of this collection are:

- The existence of the joint bank account 6295 in the name of “[Messrs H and AB] trading as [B Brothers]” – an account which had contained £65,000 in it at one stage;

- The blank bill-head paper with the heading “[B Brothers Building Contractors]”;
- The VAT registration which indicated (in HMRC’s letter of 28 February 2010 that [B Brothers] “according to [HMRC] records ... registered for VAT on 1 April 1973 ... - under VAT number 255-2638-54” which remained constant;
- The registration with NHBC as “[B Brothers]”;
- The grant aid applications to DARD under reference 644355 in the names of “[Messrs H and AB]” and “[Messrs H and AB].”

[37] The Plaintiff submits that once the court is satisfied that a partnership exists that section 24(1) of the Partnership Act assists in relation to the correct division of the property interests insofar “*all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm ...*”. Whilst one can quite see why the Plaintiff takes that approach nonetheless the court does not find it sufficient. In the first place the court has to be satisfied as to the existence of a partnership. Even accepting that the Plaintiff is under a disability it is very hard from the scant information that is available to make the leap that the Plaintiff seeks of the court i.e. to impute that a partnership existed. There are no accounts, there are no financial records and whilst there are references to a jointly held bank account there was no cogent demonstration of how monies were received, treated or paid out to or on account of either of the brothers as the account holders. There is clearly evidence from the surviving brothers that the Plaintiff and the Deceased worked together. It is equally clear that a sizeable portfolio of properties were accrued on the back of that endeavour. But it is asking too much of the court to make the leap from what is largely circumstantial evidence to say that proof of the partnership has been achieved on a balance of probabilities.

[38] Even if it were achieved there are contra indicators which the court needs to bear in mind:

- (a) A bankruptcy order was made on 8 September 1997 in respect of the Plaintiff’s assets. He was described then as a “sub-contractor” and, by virtue of that bankruptcy, even if there were a partnership it would have terminated at that point – in accordance with section 33(1) of the Partnership Act – unless the Plaintiff is able to demonstrate a continued agreement;
- (b) In the absence of the evidence of such agreement (of which there is none in this case), in 1997 that bankruptcy would have remained undischarged for a period of three years. From the evidence which was made available to the court, the Deceased was at that point becoming unfit for work (he was signed off as unfit for work in 2001) and the Plaintiff himself sought benefits from

2004 forward on the basis that he was available for work elsewhere – at least until he became of pensionable age.

[39] Overlaying all of this there is the evidence from the surviving brothers that both the Plaintiff and the Deceased had tailed off their work endeavours from the 80s onwards.

[40] In short, taking all of this into account the court finds that there is insufficient evidence to say that a partnership did exist. Even at this remote point in time the court would have expected much more cogent evidence of the existence of a trading relationship with a view profit such as would meet the definition set out in section 1(1) of the Partnership Act. The production of a miscellany of documents does not cure that absence and nor does the largely anecdotal evidence of the surviving brothers who clearly, from their own evidence to the court, were not privy to any of the financial details and business set up of the Deceased or the Plaintiff.

[41] Even if a partnership were to be found to exist is there evidence of the various properties now in dispute being partnership assets? Again we meet something of a challenge in terms of the evidence which is available to the court to satisfy it on that specific question. First and foremost all of the properties are registered in the Deceased's sole name. It is regrettable that none of the conveyancing files are available which might have shed light on how or why that was the case. Neither the conveyancing files nor the solicitor who undertook all of that conveyancing work in relation to those properties is available. Mrs McCann, of the Official Solicitor's Office, gave evidence and confirmed that she had looked through such files as were available and confirmed that there was little on them which shed light on the issue with which the court has to grapple. As a result the court is left with:

- (a) A bank account in the joint names of the brothers which (at its height) had a credit balance of £65,000 but no evidence as to how it was used;
- (b) Evidence that the lands in [Folio 123] were originally bought in the joint names of the two brothers – but then as tenants in common and not as joint tenants – and further that in 1997 the lands were further transferred into the sole name of the Deceased – this occurring just before the Plaintiff was made bankrupt.

[42] Similarly, the suggestion that the Plaintiff has a beneficial interest in the investment portfolio is a claim in respect of which the burden lies on the Plaintiff. Again, the constituent elements for a finding of an implied or a resulting trust are simply not apparent on the evidence that is before the court. Matters may have been different if the Plaintiff could have given evidence in his own account.

[43] The court can make lots of suppositions about what occurred – or indeed the reasons behind what occurred. But the reality is that there is very little by way of cogent evidence on either (a) the existence of a partnership; (b) that even if a

partnership existed the properties which are in dispute were partnership property. The court reaches the same conclusion on the trust-based claims. Further, if the court were indeed to interfere at this stage one can only see a number of difficulties arising. One has to accept that the Plaintiff – both in his initial application for benefits in 2004 and at least four occasions thereafter – declared to the Department of Work and Pensions that he had no assets. He has received benefits on that basis. One must also assume that when the bankruptcy occurred that too would have triggered an investigation into the Plaintiff's assets – an investigation which presumably came to nought. If the court were now to take a different view that would inevitably open up investigations in relation to both matters. It would further re-open the question of the treatment of IHT in the Deceased's estate – an investigation which at this stage is unlikely to be particularly fruitful.

[44] For all those reasons the court finds that (a) there was no partnership; and (b) the assets held by the Deceased were not subject to any beneficial claim on the part of the Plaintiff.

[45] That is not to say that the Plaintiff did not have a triable issue and for that reason if required the court will hear the parties in relation to the matter of costs.