

Case No: 3BS30094

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BRISTOL DISTRICT REGISTRY

2 Redcliff Street
Bristol BS1 6GR
Date: 19 August 2016

Before :

MR S MONTY QC (SITTING AS A DEPUTY JUDGE OF THE CHANCERY
DIVISION)

Between :

ROGER MOORE
(by his Litigation Friend, Pamela Moore)

Claimant/Part
20 Defendant

- and -

(1) STEPHEN MOORE

First
Defendant/Part
20 Claimant

(2) TILL VALLEY CONTRACTING LIMITED

Second
Defendant

Miss Caroline Shea QC and Miss Ciara Fairley (instructed by Michelmores LLP) for the Part
20 Claimant

Mr Nigel Thomas and Mr Paul Clarke (instructed by Thrings LLP) for the Part 20 Defendant

Hearing dates: 5, 6, 7, 8, 11, 12, 14, 15, 18 July 2016

Approved Judgment

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

Mr S Monty QC:

A brief introduction

1. Manor Farm is in Stapleford, near Salisbury in Wiltshire. It is a 650-acre arable farm (although it did for a time have a dairy herd) which for four generations has been run by the Moore family. Since 2008 the Farm has been run as a Partnership by Stephen Moore, the Part 20 Claimant, Stephen's father Roger Moore, the Part 20 Defendant, and Till Valley Contracting Limited ("the Company"), the Second Defendant. In this judgment, as in the trial, the members of the Moore family (including Julie and Andrew Lane) are referred to by their first names. The Company's shares are held as to 51% by Roger and 49% by Stephen.
2. This claim was commenced by Roger against Stephen and the Company, seeking dissolution of the Partnership between Roger, Stephen and the Company, but that aspect of the claim has only a walk-on part (there is an underlying disagreement as to the nature of the partnership, which is said by Roger to have been a partnership at will but by Stephen to be a partnership until the death of either himself or of both Roger and Pamela) and I will deal with it at the end of this judgment. It is agreed that the Partnership should be dissolved; the principal dispute is the Part 20 Claim brought by Stephen against Roger in which Stephen claims an equity over the farming business, including the freehold land, operated by the Partnership.
3. Stephen was represented by Miss Shea QC and Miss Fairley; Roger was represented by Mr Thomas and Mr Clarke. I start by thanking them for their clear and thorough submissions.
4. Stephen is married to Jackie, and they have two children. Stephen is the son of Roger Moore and his wife Pamela. Pamela and Roger also have a daughter, Julie Lane, Stephen's sister, who is married to Andrew Lane. Julie and Andrew also have two children, Victoria and Sam. Roger has two brothers, Richard and Geoffrey. Sadly, Roger suffers from Alzheimer's disease, and lacks capacity to conduct proceedings; Pamela has been appointed by the court as Roger's Litigation Friend.
5. There are several houses on the Farm. Manor Farmhouse is a substantial property and is occupied by Roger and Pamela. It was Stephen and Julie's home as they grew up. The Little House is a bungalow occupied by Stephen, Jackie and their children. Ashburton is a house adjoining Manor Farmhouse on which substantial sums were expended in anticipation of it becoming Roger and Pamela's residence in due course.
6. The background to the dispute is set out in the pleadings and is by and large agreed to be as follows.
7. In the mid-1960s, Roger and Geoffrey started to run the Farm as partners, and at that time, in 1966, their father gifted the Farm to them and some other land to the third brother, Richard, which Roger and Geoffrey bought back from Richard in 1981. Over the years, both before and after their father's death, Roger and Geoffrey bought further parcels of land which served to extend the farming operations. The farm was a successful and profitable business. Both Geoffrey and Roger took modest drawings and most of the profit went back into the business. Roger, who took the lead in most farming issues, was by all accounts an excellent farmer and Geoffrey was a great support to him.

8. Geoffrey has two sons, neither of whom have worked on the Farm other than occasionally as harvest workers.
9. Stephen was born on 2 November 1967. He has worked on the Farm since his childhood, initially at weekends, evenings and in school and then college holidays, and subsequently full time. He now, in effect, runs the Farm alone since Roger is too unwell to participate.
10. Stephen became a salaried partner in around 1998. He had been earning £200 per week for a 45 to 50-hour week (100 hours per week during harvest time). As a salaried partner, his earnings rose to £590 per fortnight, from which he paid £190 per month as a pension contribution. Those earnings were more or less in line with the drawings taken by Roger and Geoffrey. In 2003/4 Stephen became an equity partner, sharing in the profits.
11. In April 2008, Geoffrey retired from the farming business, bringing the existing partnership to an end. Geoffrey decided to give his half share of the partnership to Stephen in return for a payment from the partnership of £500,000 (in two instalments) in respect of that interest (which was worth some £3m). This decision came as a surprise to Roger, Pamela and Stephen. It was agreed by Geoffrey, Roger and Stephen that Roger and Stephen would continue to farm in partnership together. The Company was set up on advice from the Partnership's accountant, Mr Mike Butler, in 2008 for tax reasons and also became a partner, although it had no function or directing mind independent from that of Roger and Stephen.
12. In 2010 farming assets were transferred into the Company, paid for by means of Directors' Loans, with the intention that the Directors' Loans would over time be paid down from the profits of the Company. The Company's profits derived principally from its allocated share of Partnership profits; and also, albeit minimally by comparison, from income derived from its contracting operations.

The issues

13. Stephen says that from an early age Roger told him that the Farm and the farming assets of the Partnership ("the Assets", which include, since its incorporation, the farming assets of the Company) would be his one day.
14. The questions I must determine are as follows:
 - 14.1. Were promises made by Roger to Stephen to the effect that Stephen would one day have Roger's share of the Farm and the Assets?
 - 14.2. Did Stephen rely on those promises?
 - 14.3. If so, did he rely on them to his detriment?
 - 14.4. If the promises were made, and there was detrimental reliance, would it now be unconscionable for Roger to resile from that position?
 - 14.5. If so, how should Stephen's interest be satisfied?
15. It is a sad fact that since Geoffrey's retirement in 2008 the relationship between Roger and Pamela on the one hand and Stephen on the other deteriorated dramatically to the

extent that these proceedings reflect a substantial falling-out between the members of the Moore family. Stephen's assertions of his entitlement to an equity in Roger's interest under the Partnership, to include his share of the Farm and the Assets, which is supported by his wife Jackie, is strenuously opposed by Roger and Pamela, and also by Julie and Andrew.

Principles of law

16. The principals of an equitable estoppel claim are, to my mind, best set out by Lewison LJ in Davies and another v Davies [2016] EWCA Civ 463 at [39]:

“i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: Thorne v Major [2009] UKHL 18, [2009] 1 WLR 776 at [57] and [101].

ii) The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: Thorne v Major at [29].

iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a “mutual understanding” may depend on how the other elements are formulated and understood: Gillett v Holt [2001] Ch 210 at 225; Henry v Henry [2010] UKPC 3; [2010] 1 All ER 988 at [37].

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

v) There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: Gillett v Holt at 232.

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

vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any

countervailing benefits he enjoyed in consequence of that reliance: Henry v Henry at [51] and [53].

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

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

17. These are the principles I have had in mind when approaching the evidence and the issues in this case.

The approach to the evidence

18. As Lewison LJ observed, all proprietary estoppel claims are fact-sensitive [39] and it is necessary to analyse the facts with sufficient rigour [42].
19. That task is made more challenging in the present case because of the nature and length of the written witness evidence. Stephen’s witness statements run to in excess of 100 pages. Pamela’s statement is almost 70 pages, some of which appears to be an attempt to introduce expert evidence. The statement of Mr Mike Butler, the accountant, is 136 pages, much of which is repetitive. For reasons I need not go into, Mr Butler’s witness statement was something of a joint collaboration between the parties. That being so, it is incomprehensible to me that no-one, on either side, thought more carefully about how to excise the repetitions from his statement and how to limit its length, as well as how to avoid the 4 lever arch files of annexed documents being before the court, all of which save for one or two minor exceptions, were copied elsewhere in the trial bundles.
20. In addition, there are lengthy statements from Julie and Andrew. I heard oral evidence from all of these witnesses, as well as from a number of others. There were 13 lever arch files of documents and copy diary entries, and further documents (including all of Pamela’s diaries for the relevant years) were introduced as the hearing progressed.
21. A principal theme in the statements of Pamela, Julie and Andrew relates to the alleged bad behaviour of Stephen. Their statements in this action, as well as statements made in related non-molestation proceedings which Roger brought against Stephen, which statements were also in the trial bundles, detail a number of alleged incidents which are said to show Stephen’s unreasonable conduct in relation to the running of the farm, his attitude towards expenditure, and his behaviour towards Roger and others. Very few of these were explored with Stephen in cross-examination. Mr Thomas made his position clear on Day 2 of the trial. He stated that he did not rely on any matters which he had

not put to Stephen in cross-examination. It follows that save for those matters of conduct or behaviour which were the subject of Stephen's cross-examination I will disregard them all. That is not to say that they did or did not happen; they are simply not relied on by Roger and I need say no more about them at this point.

22. I have also disregarded those parts of the evidence (principally in Pamela, Andrew and Julie's statements) which are either comment or opinion evidence in relation to whether Stephen has suffered a detriment. These were highlighted as objectionable by Miss Shea by placing a red line next to the relevant passages, and whilst I have read them, I agree that they have no place in statements of witnesses of fact.
23. As the evidence progressed, it became clear that there were a number of key events in relation to which I must make findings of fact. It seems to me that the best way of approaching the evidence in this judgment is to identify those as part of the narrative and to set out my findings.
24. Before doing so, it is right that I should comment briefly on the principal witnesses whose evidence I have read and heard.
25. Stephen struck me as a truthful witness in all respects. His evidence about working on the farm and how he was encouraged to do so by Roger and Geoffrey was in my judgment accurate. He clearly loves his father and has always looked up to him. By contrast, his relationship with Pamela was always a difficult one, as it was with Julie and latterly with Andrew. It seemed to me that his evidence about Roger taking a back seat once Geoffrey retired but finding it difficult to cope with a reduced role on the Farm rang entirely true. He was criticised by Mr Thomas for not having raised his estoppel argument until the service of the Defence and Counterclaim in March 2013 (in which for the first time he claimed an interest in Roger's share) and the Amended Defence and Counterclaim in June 2015 (which raised for the first time a claim in respect of the Company's share of the Assets) whereas he had previously contended in solicitors' letters that Roger's share was Roger's, to do with as he pleased. Whilst I take that into account when assessing Stephen's evidence, I do so also against the background of the correspondence between the parties' solicitors and the letters Stephen wrote to Roger, which I will deal with below.
26. Pamela's evidence was far less satisfactory. It was a theme of her evidence that whilst it might have been Stephen's hope or expectation that he would inherit the farm, those hopes were dashed after Geoffrey's retirement in 2008 when Stephen's behaviour deteriorated. For the reasons I shall set out below in my findings of fact, the allegations of bad behaviour have not been made out, and in my view the truth of the matter is this. It was always Roger's intention that Stephen would inherit the Farm and the business, and that intention was shared by Pamela. As I go on to find, these intentions were expressed as promises to Stephen. When Roger found it hard to deal with both his diminished role in running the farm after 2008 (a letter from Roger's doctor dated 10 December 2008 reported, "Certainly he seems to have some difficulty coping with his demotion as head of the family farming business, a role that has now been taken over by his son") and his declining ill health, particularly after 2009, Pamela took advantage of Roger's mental decline, which in my view does her no credit; she was and remains determined to redress what she regarded as a stark inequality of likely inheritance between Stephen and Julie by unfairly portraying Stephen as a violent and difficult son

who made her and Roger's life a misery and by refusing to accept that, whilst he had all of his mental faculties, it was Roger's (and earlier, Roger's and Geoffrey's) unchanging intention, expressed to Stephen, to see Stephen at the helm. This led, in my judgment, to her evidence being coloured by later events, and by her refusal to accept that Roger could possibly have made promises to Stephen about which she was unaware. Pamela was also far too willing to minimise the effects of the onset of Roger's declining health, as I shall set out below. On all issues in contention, I preferred Stephen's evidence to that given by Pamela.

27. Julie came across as confused, particularly about the way in which her witness statement was prepared (at first she said that "we wrote it", then she said she had written it, she then said that she agreed it although no-one else helped her to write it, but then said she wrote a lot of it although no-one else helped her write the rest of it), and her oral evidence was so uncertain and evasive that as a whole I have concluded her evidence was not reliable.
28. Andrew is clearly a caring son-in-law to Roger and has given – and continues to give – a huge amount of assistance to both Pamela and Roger particularly in relation to Roger's care. However, his evidence lacked objectivity and was also unreliable. For instance, Andrew said that since 2008 Roger had asked him to assist with business management but the reasons he gave for this were extremely vague and in my view unconvincing; and in relation to events in 2011 he said that Roger asked him for investment appraisals and that Roger was dissatisfied with advice from Mr Butler and others so he took advice from a firm called Hazelwoods, but in fact the reason for this was that Mr Butler (having tried to broker a deal between father and son) felt he could not give impartial tax advice to both sides on any settlement proposals, which was the real reason third party advice was sought. He also said (in relation to the meeting in February 2010) that whenever Roger raised the question of the car purchase, Stephen kept changing the subject, a suggestion which is unsupported by Andrew's own minutes of the meeting.
29. Sam (Andrew and Julie's son) was doing his best to assist the court, and plainly is very understanding of and attentive to his grandfather Roger's needs, but at times he came across as rather too willing to support the defence case. His evidence about meetings he attended was quite vague and his evidence about Roger chairing family gatherings or meetings was at odds with all of the evidence about Roger's ability to understand things only when they were explained carefully to him one-on-one.
30. Mr Michael Butler, the Partnership's accountant, was doing his best to assist the court and was a truthful witness. He tried his best at all times to steer an impartial line. I accept his evidence.
31. Mr Christopher Lush, the solicitor who drew up wills for Roger and Pamela as I shall set out below, was a truthful witness whose evidence, with some relatively minor exceptions, I also accept.
32. I derived considerable assistance in understanding the medical evidence relating to Roger from the written and oral evidence of Dr Series. His was to a great extent a paper exercise, commenting on reports and documents produced by others, but I have no hesitation in accepting Dr Series' evidence as accurate and, as I say, very helpful.

Roger's health

33. Before I go any further into the facts, I need to say something about Roger's mental state. It will be appreciated from my references to it so far, and the fact that he has had a Litigation Friend appointed, that for some time it has been poor and has in recent years and over the last few months deteriorated further.
34. Roger's gradual declining mental state, due to his Alzheimer's Disease, permeates almost every event since at least 2008. I fundamentally disagree with Mr Thomas's submission that Roger's medical condition is only of tangential relevance. In my view it is the key to unlocking the issues in this case.
35. I am grateful to Dr Series's helpful evidence in relation to Roger's mental health.
36. All of the evidence establishes that Roger was a hard-working innovative and progressive farmer of considerable ability and business acumen who took the lead in running the farm from the 1960s and built up a very successful and profitable business. He also had many outside interests, notably as a Parish Councillor for many years.
37. The first mention of any problem in Roger's medical records is as far back as April 2006, when a GP note records, "Family had asked him to mention problems with memory. On discussion may be due to pressure of work and juggling many things at once. Not keen for further assessment."
38. In February 2008, the GP notes record, "Worried re memory", and by December 2008 it is noted that, "Has noticed memory loss – wife particularly bothered as having to cover up for him. On further Q some low mood and not coping with stepping down as head of the family farming business. Examination: MMT 25/30. Diagnosis: ?mild depression + ?early dementia."
39. The MMT score is a reference to a "Mini Mental Test", a term used for the Mini Mental State Examination (MMSE). Dr Series says that a score of 25/30 was on the borderline of normal for a person of his age; he described it as corresponding to a very mild degree of impairment.
40. Roger was referred to the psychogeriatric service and the referral letter gives examples of other memory problems, to the fact that Stephen thought he was "losing his sparkle", and states that "Recently his family have started noticing significant deterioration in his memory and his capacity to perform tasks." The letter also refers to Roger having had "some difficulty coping with his 'demotion' as head of the family farming business, a role that has now been taken over by his son."
41. By February 2009, there was a slight worsening in his memory, starting sometime before Christmas 2008. Roger was able to give a good account of activities on the farm "during this somewhat challenging period of handing many responsibilities over to his son." The MMSE score was 26/30 and it was noted that there was mild cognitive impairment without evidence of significant functional deficit. A GP note of March 2009 records, "Mild cognitive disorder." Roger declined to have any follow-up appointments. In June 2009, Roger had surgery for colon cancer, and Dr Series said that this might have had an effect on his cognitive function. However, his decline in 2009 seemed to have been quite slow.

42. There is nothing further in the notes until March 2011 when Roger's MMSE score was 24/30, a decline which Dr Series says was considerably slower than average. By July 2011 the score was 23/30, still only mildly impaired. What seems to have prompted this visit to the doctor was a recent holiday in Hong Kong, where Roger wandered off and got lost. Roger's Consultant Psychiatrist Dr Jeyapaul noted in September 2011 that memory problems had existed for 2 years and have steadily but progressively worsened. Dr Jeyapaul felt that he had signs and symptoms suggestive of an early Alzheimer's dementia, and Roger was started on Aricept (to improve cognitive function), to which he apparently responded well.
43. By November 2011, his MMSE score was 24/30. In January 2012, the GP noted that Roger was "Under psychs for Alzheimer's and MMTS improved on Aricept." By April 2012 the MMSE score was 23/30. Dr Series commented that this shows that the decline continued to be very slow, and he was still only mildly impaired. The score was 23/30 in January 2013 (although Dr Jeyapaul noted a score of 17/30 in his Report of December 2012 – see paragraph 48 below). Dr Series said that the greater period of deterioration was after December 2012. Commenting on the variation in scores, Dr Series noted that there could be changes in results because Roger might have had good days and bad days, and possibly because different examiners might apply and score the test in different ways. A variation of 2-3 points would not be significant, but 6 points would be.
44. On 12 April 2013, Roger suffered a TIA (transient ischaemic attack). In November 2014 it was noted that there was a "Recent increase in aggression" (notably towards Pamela) and by January 2015 Roger's behaviour was described as "challenging" and aggressive towards Pamela. By December 2014 the MMSE score was 6/30 which as Dr Series noted was a dramatic decline. In March 2015 Roger was prescribed memantine, a medication for moderate to severe dementia. 2015 and 2016 have seen Roger's mental state continue to decline.
45. I have carefully read Dr Series's Report in which he summarises and comments on the medical evidence and gives a most helpful outline of the symptoms and progression of Alzheimer's Disease, which is the most common form of dementia. It presents itself first with memory problems, usually affecting the short term memory, but as the disease progresses short term memory is also lost, and long term memory is affected. The progression of the disease also brings with it an impairment of other cognitive functions such as the ability to understand language and expressing thoughts or making judgments. Later on, it can also spread to other aspects of behaviour, such as aggression. I have also taken into account the very helpful oral evidence given by Dr Series in which he explained the difference between mild, moderate and severe dementia.
46. Dr Series agreed that it was primarily a question for the treating physician as to when a patient crossed the line, as it were, from mild to moderate and then to severe dementia. Dr Series said that when most clinicians speak about "mild", "moderate" and "severe", they were basing that assessment on their knowledge of the full progression of dementia from start to finish. Severe dementia, for clinicians, would describe a person who has great difficulty expressing themselves, is probably quite reliant on others for all sorts of assistance with daily care, possibly in a care home. There might be challenging behaviours and the person would be pretty incapacitated. They might have difficulty recognising people. Mild dementia, to a clinician, is the first point at which a clinician would say dementia was present. It begins gradually, and precisely when it is noticed in

the patient can vary. In general terms, mild cognitive impairment is one which is there and is noticeable but is not yet bad enough to have an impact on the person's day to day life. It would be typified by memory problems, which would present in a pattern which was more than mere forgetfulness. There will be a fair degree of subjectivity in making the judgment of when a person has dementia, because the level of impact on a person's life will vary, and because different clinicians will judge it differently. However, the diagnosis of when a person has crossed the line to dementia would usually be the trigger for a discussion about whether the patient would want medication for dementia. It will be recalled that Roger was first prescribed medication for dementia in October 2011. Moderate dementia was, in Dr Series' words, on the whole what is left in the middle. Again, it is a matter for the treating clinician to assess.

47. Dr Series agreed that one clinician's view of mild to moderate dementia might not be the same as another's, and mild dementia might be seen as quite problematic by the patient or the family, and that the converse might also be true, that a person with dementia might not really be aware that there is anything wrong at all, and lack insight into the problem.
48. I should note here that the precise date on which Roger ceased to have capacity to conduct this litigation is not an issue in this case. However, it is worth noting that in December 2012 Dr Jeyapaul reported to Thrings that Roger had a diagnosis of Alzheimer's dementia which was progressing, currently scoring 17/30 on the MMSE, but still had capacity to litigate. However, by November 2013 Dr Jeyapaul was of the view that he had deteriorated and no longer had capacity (it was then that Pamela was appointed as his Litigation Friend). I note that on 21 January 2013 a Nursing Report noted that Roger was finding the litigation "very upsetting and stressful. Mr Moore no longer has insight or awareness."
49. Taking all of this into account, it is clear to me that what is most important about Roger's illness is not only the MMSE score from time to time, but how Roger presented to family, friends and the outside world.
50. There were many examples given of Roger's declining mental state in the evidence, and I would just highlight a few of them.
 - 50.1. Stephen said that less than a year after Geoffrey's retirement it became apparent to him that there were issues with Roger's health. He raised those with Pamela but described her as being in denial. Roger had suffered a loss of vision when driving. This was one of the reasons Stephen gave for changing the tractor in 2009, so that Roger would no longer drive the tractor. In early 2009 Roger called Stephen saying that he could no longer remember the way to the Land Rover dealer, and Stephen was worried Roger was losing his memory. Having consulted an Alzheimer's disease clinic, he and Jackie had a word with Pamela, who expressed a concern but did not say that Roger was suffering from Alzheimer's. This was in about April 2009. Stephen described 2009 as a "watershed year" in relation to Roger's health, and he began to wonder whether an incident in 2007, in which Roger had uncharacteristically made an error when selling grain, was an early sign of his forgetfulness. Certainly according to Stephen 2009 was when Roger seemed to lose confidence of being involved in farming. It was at this time that Roger would give instructions to staff which on

the face of it were contrary to instructions Stephen had given, and this became an increasing problem.

- 50.2. Mr Gale gave evidence of seeing Roger in about 2009 by which time it was clear to him that he was not at all well, he was distant and forgetful. At the same time, towards the end of 2009, Mr Collis says that Roger was having problems with short-term memory, and had to be briefed in more detail than usual about the shoot plans; on one occasion, Roger went off in the wrong direction, and on another he placed the guns facing the wrong way. He also mentions that Julie started to follow Roger around at the shoot. Mr Collis thought she was there to support him, and Stephen believed that was because Julie and Pamela decided he needed help. Mr Collis described an occasion at the end of 2010 when Pamela called to him through the car window that “he has not got dementia”. He described himself as being quite shocked at this incident. By the beginning of 2011, Roger ceased attending the shoots. Mr Collis had a meeting with Roger and Pamela to discuss planning for the shoots, and said that Roger did not answer his questions, but rather Pamela took the lead. He describes Roger as being completely detached from the running of the shoots.
- 50.3. By February 2010, Stephen reports his father as being quite ill. Roger would be sent out of the farmhouse with an issue to discuss (which Stephen believed he had been sent to discuss by Pamela) but would forget what it was all about. At the meeting in February 2010 Roger became unable to cope and had to leave the meeting.
- 50.4. Geoffrey described an incident in about 2010 when Roger had double vision when driving around the village (this may have been the same incident as Stephen had noted, but equally it could be a different one). He described Pamela as having been in denial about Roger’s illness. Geoffrey said that Roger’s memory, which previously had been “fantastic”, had been failing since 2010 until he got to the point when he could no longer remember what had been done the year before in relation to the farming. Geoffrey could not recall if a deterioration in Roger’s health was apparent before his retirement in 2008, but that it was certainly apparent shortly afterwards.
- 50.5. Pamela said in her statement that Roger’s short term memory began to deteriorate (she did not say when) and that he was diagnosed with mild cognitive impairment in 2011, which degenerated “quite quickly” and he was diagnosed with Alzheimer’s in 2012. The diagnosis in 2011 was “a shock”. This seems to me surprising evidence, since it is clear that all of the evidence points to Roger’s problems having started at least some 2 years previously, and they must have been noticeable. Pamela’s diary entry for 19 February 2008 refers to Roger being told by his GP to come off statins “to see if it improves memory loss.” Roger’s diagnosis of “Mild cognitive disorder” (March 2009) was around the same time that he had a CT scan, which Pamela noted in her diary (no abnormality was seen). As the medical evidence (which I have summarised above) shows, there had been concerns about memory loss and deterioration in memory and capacity by December 2008 (when the diagnosis was “?mild depression + ?early dementia”), and Roger was said to have a mild cognitive disorder by March 2009. It was also in September 2011 that Dr Jeyapaul noted

that memory problems had been in existence “for about two years” and “they have steadily but progressively worsened. ... He has signs and symptoms of an early Alzheimer’s disease.” Roger was started on Aricept. In my view, Pamela was deliberately seeking to minimise the effect of Roger’s memory loss prior to 2012. When she was asked about various incidents – for example, it was put to her that Roger and Stephen had discussed in advance Stephen’s proposed purchase of the Nissan car – she accepted that Roger was suffering from some memory loss but kept referring to his MMSE score being good. Pamela did this on a number of occasions. In my view, this was a further attempt to minimise the severity of Roger’s health, as was her evidence that there were no signs which worried her prior to 2009 (which on the medical evidence simply cannot be right). Similarly, Pamela gave evidence that when they went to see Mr Lush in February 2010 and discussed Lasting Powers of Attorney, that was not prompted by increased misgivings about what might be wrong with Roger and she did not have in mind that Roger might be suffering from dementia at that point; she said that Roger’s mild cognitive impairment, diagnosed in 2009, was “only very, very minor” and they did not have in mind that he might have Alzheimer’s disease. However, the day before they went to see Mr Lush, Pamela’s diary entry for 4 February 2010 records, “Roger to be assessed for Alzheimer’s”. Pamela’s reaction to being shown that diary entry was to say, “Oh right, okay. Yes, because he had spasmodic examinations. But he wasn’t diagnosed with Alzheimer’s until 2011.” In my judgment this was another example of Pamela playing down Roger’s illness at the relevant time. I thought that Pamela’s evidence about all of this was not credible. Julie also downplayed Roger’s mental decline. In her statement she had said that by April 2013 “my father’s memory had unfortunately begun to decline by then”, whereas she must have been aware that the decline had commenced a lot earlier than that.

- 50.6. There was an incident in Hong Kong in early 2011, when Roger became disorientated and wandered off. The GP notes record that Pamela was “now aware he has been covering his memory loss at home.”
 - 50.7. In December 2011, Roger came to see Stephen at the Farm and said that, “The girls are making me do things I don’t want to do.” Stephen described him as extremely vulnerable and that he knew he was unwell. Stephen was not told that Roger had Alzheimer’s, and he did not discover this until February 2013.
 - 50.8. In April 2012, Stephen and Roger had a conversation in which Roger said that he did not really know what was happening and that he had nothing to do with it. By January 2013 Stephen thought that Roger was being used and what was being done in his name was not what he would have wanted.
 - 50.9. In June 2013, at Salisbury County Court, Roger walked over to Stephen and Jackie and said, “Here are the boys.” He did not seem to recognise them.
51. In my view, it is clear that at least since 2009 Roger was suffering from memory loss which affected his daily life, and that it was noticeable to others from at least early 2010. From late 2011 Roger’s dementia was – taking into account what Dr Series said – moderate and by late 2012 it was at least moderate to severe. I think it doubtful, against

that background, that Roger could have been playing much of a part, if any, in driving this litigation forward since late 2012-early 2013.

The early years, the promises and Geoffrey's retirement

52. Sad to say, relations between Pamela and Stephen had been difficult since Stephen's childhood. Pamela said in cross-examination that she would not have criticised Stephen in front of Mr Butler, who was in the same school class as Stephen, but Mr Butler had a clear recollection of her having done so, which was not challenged, and I accept that Pamela was indeed critical both of Stephen's behaviour and his academic performance. It was to my mind surprising that Stephen and Roger's mutual love for fast cars was something which Pamela apparently didn't remember and rather dismissed.
53. Stephen was encouraged to be a farmer by his father and he shared his father's passion for farming. Both Roger and Geoffrey allowed Stephen to assist on the Farm from an early age, driving tractors and ploughing fields. Whilst he could not be described as academic (a fact which upset Pamela, as I have observed), he threw himself wholeheartedly into working on the Farm. I accept Stephen's evidence that since he was a teenager it was not only clear to him that he would one day take over the running of the Farm, but also that both Geoffrey and Roger encouraged him in that belief. Roger would say to him that all of this (referring to the Farm) would be his one day, and Geoffrey also made comments to the same effect.
54. Stephen's pleaded case is that these comments were made and repeated on more than a dozen occasions, but that he has specific memories of three particular occasions; first, in the early 1990s when Stephen had completed three years at agricultural college; secondly, in around 2002 when the partnership undertook a contract with a Mr Tremlett; and thirdly in 2007/8 when Geoffrey's retirement plans were being formulated.
55. There were two strands to Mr Thomas's cross-examination of Stephen in relation to the promises.
56. The first of these was that Stephen's evidence was thin and did not support the pleaded case. However, in his cross-examination Stephen recalled that when he was a member of the Young Farmers Association, and was preparing to go out to an event, his father would say, "It will be all yours one day", the inference being that he should be staying on the Farm, working, rather than going out. He also said that these words were repeated on many occasions over four decades.
57. I have to say that I found that evidence convincing. I do not find it surprising that due to the passage of time Stephen cannot particularise each and every occasion on which these comments were made. I accept his evidence that they were made consistently and often.
58. I do however think that Stephen's written evidence was a bit confused in relation to one of the pleaded occasions, namely the one in 2002 involving Mr Tremlett. Stephen's statement referred to an occasion involving a Mr Tarrant in 1997 when, according to Stephen, "My father told me that it was important that I accompany him to Mr Tarrant's farm to discuss what would be involved. That would stand me in good stead for when the business was mine." It was put to Stephen in cross-examination that he had not mentioned in his statement any incident in 2002 involving Mr Tremlett. Stephen said,

and I accept his evidence, that he was made similar promises on both occasions. Both were to do with the expansion of the farm through acquisition of further land.

59. The third specific example pleaded in relation to promises was at the time of Geoffrey's retirement. The first thing to note, in my view, is that Stephen's assertions that promises were made are entirely consistent with the evidence given by Geoffrey, who said that his belief was that Roger always wanted Stephen to succeed to the ownership of the Farm and the entirety of the business in order to secure it for another generation of the Moore family, and that this underpinned the decisions Geoffrey made when he retired in 2008, which he said was "in order to facilitate Stephen's inheritance of the entirety of the Farm and the farm business, which is what Roger and I both wanted." In the same way that Roger and Geoffrey's father had ensured the transmission of the Farm to them, so Roger and Geoffrey wanted to pass it on to Stephen. Indeed, Geoffrey's evidence was that Roger had always told him that the farm would go to Stephen, and although he did not recall Roger having said that to Stephen in his presence, Roger certainly said that to him.
60. Geoffrey regarded himself and Roger as "custodians [of the Farm] for another generation". To that end, Geoffrey passed his share in the Farm and the business not to his own sons, who were not farmers, but to Stephen, who was and who had been groomed to take over that role. He described it as "very plain from an early age that Roger was grooming Stephen to succeed to the business and to take over the Farm." Geoffrey said, and I accept, that as early as 2003 when he began thinking about retirement he decided he would facilitate Stephen taking over. Geoffrey says that Roger agreed with him "that Stephen should have the reins and Roger would take a back seat."
61. Geoffrey went to see Mr George Knapman who was the partnership's agent and surveyor, and told him that his plan was to pass his interest to Stephen. Mr Knapman in his witness statement confirmed that Geoffrey told him that he wanted Stephen to succeed to the family business and Mr Knapman understood that this was a decision by Geoffrey "and presumably Roger". Mr Knapman accepted in his statement (which was not challenged) that he did not recall asking Geoffrey whether all of this had been agreed with Roger, but rather he took it as read that Roger would have been delighted and that Roger would in turn pass his own share to Stephen.
62. Pamela accepted in cross-examination that Geoffrey's decision represented "the next stage in Stephen's succession to taking over the entirety of the business" and that was her understanding and the way she saw it in 2008.
63. It seems to me that everything points to an over-arching plan under which Stephen would inherit the whole farm and business in due course, and that Stephen was told that this was the case by both Roger and Geoffrey. I think that Pamela is wrong to characterise that as a mere hope – in my view, on the evidence, it was more than that. It was a clear understanding and intention which Stephen was told about on many occasions. It underpinned all the decisions made in relation to the Farm, and in particular the basis on which Geoffrey retired.
64. Stephen's evidence is also consistent with that of Mr Butler. By 2006, Mr Butler was aware that Geoffrey was planning his retirement, and that Roger and Pamela knew he was and that Geoffrey wanted Stephen to succeed to the business; Mr Butler says that Roger and Pamela were keen that he spoke to Geoffrey to ensure that was what he wanted.

65. Geoffrey was also completely clear in his evidence; “Fundamentally, had I ever believed in 2007/8 that Roger was not going to pass his interest in the Farm and the business to Stephen, then I would not have retired on the terms that I did.” In my judgment, Geoffrey’s evidence is of fundamental importance in showing what Roger’s real intentions were. The decisions taken by Geoffrey in connection with his retirement are only consistent with a belief, shared by him, his wife Liz, Roger and Pamela that Stephen was to inherit the Farm. In my view, on Stephen’s evidence, that was a belief and indeed an intention which was expressed to Stephen.
66. There was a proposal put forward that in the event of an outright sale of the Farm by Roger and Stephen, Geoffrey would be entitled to a share in the proceeds. For reasons possibly connected with the tax implications, that clawback provision was never finally agreed or implemented.
67. The payment of £500,000 had no real connection with the value of Geoffrey’s share, but was the amount Geoffrey thought he would need for his retirement; his actual share was worth many times that. Pamela said that she and Roger thought the sum was far too high, and they told Mr Butler that they were unhappy about it. Since its true value was many times what Geoffrey wanted, the view that it was too much could only be justified on the basis that the value of Geoffrey’s share was in reality not a monetary one which each was entitled to realise by a sale but rather that each of Roger and Geoffrey truly regarded themselves as custodians of a family business whose underlying value was that it provided and would provide continuity into the future.
68. Support for the promises having been made comes from a number of other witnesses.
69. Mr Whatley used to go out shooting foxes with Roger and Mr Alexander. He recalls Roger telling them that Stephen would have the Farm one day. He said that Roger used to talk about the Farm a lot and what would happen to it in the future, and that Roger told them, “the farm would stay as one”. Mr Whatley described this as more than just a throwaway line, and that Roger was the sort of man who knew what he wanted.
70. Similarly, Mr Alexander recalls the same thing being said. He recalls that Roger was always talking about the Farm, and that it was well known that Stephen was going to have the Farm. He said that Roger told him that on more than one occasion, but that he recalled one evening in particular when Roger said, “all this has got to go to Stephen one day.” Mr Alexander asked him, “what about the daughter?”, to which Roger replied, “she won’t have nothing of the farm, he said, because you can’t split the farm up. He said, she’ll have to have the house and a bit of cash. That’s what he said about that.” I note that it was not suggested to Mr Alexander that he had misheard or misunderstood or had made all of this up, and I accept that he was recalling what Roger had indeed said to him.
71. Mr Gale, a close friend of Roger’s for almost 30 years, also said that his belief was that Roger wanted to secure the business for the next generation to perpetuate the Moore family inheritance. He said, in cross-examination, that he spent a lot of time in Roger’s company socially and in connection with the NFU and the Dorset Seed Growers’ Group, and that “of course when he paid out his brother Geoffrey, he made it quite clear that he was doing that so that Stephen could inherit the whole farm.” He went on to say that Roger had told him there had been family meetings “and that he’d decided that he would buy Geoffrey out so that Stephen could inherit the land that he’d built up over his life

since he inherited the farm from his father.” Mr Gale says Roger told him that he had discussed it with Stephen, that he would be inheriting the farm, and that Stephen had also told him that. None of this was subject to challenge in cross-examination, and I accept all of this evidence.

72. Geoffrey’s wife Liz said that it was always her belief that Roger wanted Stephen to succeed to the business, and that she was told by Pamela that both her and Roger wanted Stephen to take over the entirety of the Farm and business and was pleased about Geoffrey’s decision to retire on terms that facilitated that. She said that whilst she never heard Roger say that in terms, “it was something we always understood. It was accepted. It was the reason why I paid for – helped pay for my children’s – my boys’ education, because I knew they would have to make a life away from the farm.” She knew nothing about Roger’s testamentary intentions, but assumed that he would have left the farm to Stephen. She also said that Roger told her son, Will, that if he wanted to work on the Farm when he was older, he would be working for Stephen.
73. It seems to me that the intention that Stephen would inherit the farm is also reflected in the fact that over £100,000 of partnership money was spent on refurbishing Ashburton to make it fit for a home for Pamela and Roger once Stephen took over; the assumption appears to have been that when the time came, Stephen would move into the Manor House and his parents would move into Ashburton.
74. Jackie, Stephen’s wife, also said that the promises were made, sometimes when Stephen was there, and sometimes to her alone, as long ago as before they were married. I thought the suggestion that this was to encourage her to marry into the family to have been an unfair one. I accept her evidence.
75. Sam’s evidence was that he recalled Roger clearly saying that the notion of Stephen having suffered a detriment was nonsense. He said that this was after March 2013, when the estoppel claim was first made, but by that time in my view Roger was not capable of fully understanding the issues in relation to detriment. Sam also said that Roger told him Stephen’s claim to have been made promises was a load of rubbish, “a bunch of lies”, but again Sam said that this was after March 2013, and I think he may be mistaken about this. Even if I am wrong about that, it is hard on the medical evidence to credit Roger with the understanding necessary to have expressed any reliable views on the issues in this case after March 2013. Sam accepted that he never asked Roger whether he had done anything to encourage Stephen to believe that one day the Farm would be his, and that the discussions were all focussed on whether promises had been made.
76. Andrew said in his statement that, “Even in recent years, when Roger’s mental capacity has been an issue, Roger has always been 100 per cent consistent in his view that he never made any promise or representation to Stephen that he would inherit his interest in the farm.” In cross-examination, Andrew explained that this was in fact a reference to the period after 2013 when the Defence and Counterclaim was served. The sentence from the statement which I have just quoted seems to me to be an example of how Andrew was willing to argue the case rather than focus on what he knew and when.
77. The second strand of cross-examination was that the estoppel claim was a late invention which had not featured in any correspondence between the solicitors until it was raised in the Defence and Counterclaim in 2013. On the contrary, Stephen’s position in that correspondence had been that Roger was free to deal with his partnership share as he

wished, which Mr Thomas said was wholly contrary to and conflicting with Stephen's present claim to an equity.

78. By way of illustration:

78.1. On 16 April 2012, Thrings LLP, Roger's solicitors, wrote to Mr Williams of Wilsons Solicitors LLP (then Stephen's solicitors; Mr Williams later moved to Veale Wasbroughs and then Michelmores, and Stephen remained his client throughout) saying that Roger intended to transfer his share of the partnership to Andrew and Julie, whether or not Stephen agreed to continue the partnership. Mr Williams replied on 20 April 2012, referring to Roger's stated intention, "It is entirely a matter for Roger if he wishes to do that. Stephen cannot stop Roger assigning the whole or part of his interest in the Partnership to Julie or Andrew or otherwise. If such assignment proceeds, please let me know."

78.2. On 15 June 2012, Mr Williams wrote to Thrings, "Stephen accepts that if his Father now wishes to divest himself of his interest in the business, he is free to do that by way of an assignment of his interest to Stephen's sister, Julie, and his brother-in-law, Andrew. There is nothing that Stephen can do to stop that."

78.3. On 23 August 2012, Mr Williams wrote to Thrings, "We did, however, say plainly we could not object to Roger assigning his interest in the Partnership to Andrew (jointly to Julie, Stephen's sister or otherwise), if that is what Roger wanted to do."

78.4. On 14 January 2014 Stephen again wrote direct to Roger, making an offer to partition the farm. He made no mention of any promises or of an estoppel.

79. Mr Thomas submitted that this correspondence was very hard to square with the estoppel claim now raised. Mr Thomas referred to Shirt v Shirt [2012] EWCA Civ 1029 in which a claim to an estoppel was rejected. The Court of Appeal noted that the trial judge had taken into account correspondence from solicitors for the claimant in which they had proposed an arrangement inconsistent with the estoppel claim as being one of the factors which pointed against promises having been made [15] and that if an estoppel claim had any validity, it would have been mentioned in pre-action correspondence but it was not [65]. Mr Thomas therefore said that the correspondence in this case was in itself a reason to reject the claim. With respect, I do not agree. Each case is different, and turns on its own facts. The question is always whether the promises were made. In my view, there is evidence that they were, and the question in relation to the correspondence is whether it can be elevated into being clear evidence that in fact they were not.

80. Stephen was pressed on this by Mr Thomas, and said that he had in fact told both Mr Williams and before him Mr Russ of Willmott Clarke (his previous solicitor) that he had been told he could expect Roger's share of the farm. Mr Thomas said, with some force in my view, that if he had mentioned the promises to Mr Williams, then surely Mr Williams would have mentioned them in his correspondence with Thrings, and would not have said that Roger was free to deal with his share as he wished. However, Stephen's evidence was that at this point Mr Williams was intent on trying (without success) to get the parties to meet and discuss matters with a view of getting Roger to agree to carry on farming with Stephen as they had before. Stephen said that Mr Williams wanted to try to resolve matters out of court, by leaving things as they were (a partnership between

Roger and Stephen, without the involvement of anyone else): “We tried our very best to [sort it out of court], and the last resort was one of estoppel to try and put my father’s wishes of keeping the farm as a whole.” As to his suggestion of a partition, he said that this was a final and sensible attempt to avoid a legal battle. He said that he did not want to say to his father that he had been promised the Farm because of his father’s mental state at the time; he described Roger as “irrational” and “very difficult to deal with, he was not rational, and certainly I wouldn’t be going to him and saying: come on, dad, you know, you promised me the farm. That is certainly what I wouldn’t have been doing because of father’s state of mental health.” It was clear to me that Stephen was deeply fond of his father and distressed at his state of mind at that time; I have to say that I agree with Miss Shea that it would have been inflammatory of Stephen to assert an equity over Roger’s share in circumstances where Stephen simply wished things to get back to how they were, and that simply because the estoppel claim was not advanced in the correspondence it does not mean that there was no such claim. I have to assess the position on the evidence I have seen and heard, and not simply on the correspondence. I also take into account that within the correspondence,

- 80.1. Stephen also wrote to Roger direct after a meeting in May 2012 in which he stated, “You have told me many times in the past that you would be leaving the farm to me.”
 - 80.2. Thrings, in their letter of 25 June 2012, said, “I have made it clear that my client will not be transferring his share of the partnership to Stephen. ... You may call this disinheritance if you wish”.
 - 80.3. In his letter of 23 August 2012, from which I have already quoted, Mr Williams also wrote, “Before all of this started, Roger made it plain to Stephen that he intended to leave the farm to Stephen and make separate provision for Julie and her family.”
81. In my view, the position is that Stephen’s claim that he had been told by Roger that he would inherit Roger’s share was made, and Thrings knew it had been made, in correspondence in which Roger was saying that Stephen either had to agree to take Julie and Andrew into partnership or face dissolution and the ultimate sale of the Farm, and Stephen through his solicitors and directly to Roger was trying to preserve the status quo without being inflammatory. It is notable that during this period of correspondence at no stage did Roger (either directly or through Thrings) respond to the points made at 80.1 and 80.3 above; Stephen was saying that there had been promises, and Roger did not say this was not true. It is further of note that all of this took place at a time when, according to Pamela and to Thrings, Roger had capacity, and yet there was no witness statement taken from Roger dealing with these points, despite the fact (as Miss Shea points out) that Roger was apparently well enough to have given a statement in support of the non-molestation proceedings on 31 January 2013, and he attended court for the hearing of those proceedings in June 2013 (three months after receipt of the Defence and Counterclaim in which the estoppel claim was made). There was no explanation given as to why, in the light of Roger’s degenerative condition, a statement was not taken. Miss Shea says that it beggars belief that no statement was taken from Roger. It cannot be that it would have been too distressing to raise the subject; all the witnesses said that he was talking of little else for a long time after receipt of the Defence and Counterclaim, and that they kept asking him, 10 or 15 times in Pamela’s case, if he had “made the promises”.

Miss Shea says that the Court is entitled to draw adverse inferences when a party fails to give live evidence without a good explanation of why, and says that an adverse inference should be drawn from the fact that no witness statement was taken from Roger, at a time when he had capacity, and is said both to have understood the issues and to have vehemently denied ever “making any promises”. As Mr Thomas points out, the promises were denied in the original Reply and Defence to Counterclaim, which was verified by a statement of truth signed by Roger on 25 April 2013. In that pleading, it was expressly denied that Roger had ever promised Stephen that he would inherit Roger’s interest in the Farm, and that it had always been intended that Pamela would inherit that interest on his death. However, the force of that point is somewhat diminished, in my view, because that pleading also avers that it was not envisaged or intended by Roger that Stephen would inherit Roger’s interest, which as I have made clear above is in my judgment contrary to the evidence I have heard.

82. It seems to me that on the correspondence and the evidence, the points made by Mr Thomas have some force but I accept the explanation given by Stephen and the fact that the absence of any response from Roger in the correspondence to the allegations made by and on Stephen’s behalf that Roger had made promises (although I take into account what is said in the pleadings), and the lack of any explanation for its absence, is a counterbalancing factor.
83. In my judgment therefore, and in conclusion on this point, whilst I think it would have been better had the estoppel claim been mentioned in correspondence from the outset, the fact that it was not is not fatal to Stephen’s claim nor does it undermine its validity in circumstances where I accept, as a fact, Stephen’s evidence that the promises were made, and where Roger could have responded to these assertions in correspondence but did not. I reject the suggestion that Stephen made a deliberate decision not to mention an estoppel claim until March 2013 when, according to Mr Thomas’s question to him, “it was obvious your father was not capable of giving evidence”, because it was being asserted on Roger’s behalf that Roger did in fact have capacity right through until October 2013 when the court determined, on the basis of medical evidence, that he did not.
84. Julie’s evidence was that she was unaware of any promises having been made by Roger at any time, and that on two occasions after the Defence and Counterclaim were served, Roger denied having made any promises. In her witness statement, however, she had said that her father’s comments about promises had pre-dated this litigation, which was clearly incorrect.
85. Mrs Becker, a long-standing friend of Pamela’s, gave evidence that she was surprised that Roger did not mention his intention to leave the farm to Stephen. She said in her statement, “Pamela has been vehement to me that she and Roger never promised the farm for Stephen, that she and Roger were unaware of Roger giving any form of encouragement to Stephen and that she was completely unaware of any firm expectation.” I find it difficult to accept Mrs Becker’s evidence, partly because she expressed the view – totally contrary to the tenor of the evidence of Geoffrey himself – that if Geoffrey had known about the present dispute he would never have given his share to Stephen, and partly because I formed the impression that she had discussed with Pamela what should be in her statement. Mrs Becker also said in her statement, “Neither Roger nor Pamela ever expressed to me any intention that Stephen would inherit Roger’s share of the partnership in full.” When asked about the use of the words, “in full”, Mrs

Becker was unable to explain other than by reference to conversations about testamentary intentions which she was not sure actually took place. I found her evidence difficult to follow and mostly speculation, and I am unable to place any reliance on it.

The 2007 wills

86. The importance of the 2007 wills is that Pamela relies on them as showing that it was never Roger's unqualified intention to leave the Farm to Stephen. In my view, this reliance is misplaced.
87. In 2007, the year before Geoffrey retired, Roger and Pamela consulted their solicitor, Mr Lush, and made wills. Roger already had a will, made in 1977, but it appears that Pamela had not previously made a will. Mr Lush speculated that Geoffrey's impending retirement may have prompted them into thinking about things, and I expect that is the case.
88. On 16 January 2007 Mr Lush saw Roger and Pamela in a meeting which lasted 1½ hours. He made an attendance note immediately after the meeting. It records as follows (I have omitted some non-material parts of the note):

“Notwithstanding the very substantial (and mostly IHT free) value of the farm compared to their other assets (of which they provided a list) it is their firm intention that Stephen (now a Partner in the business) should have the farm and House although already they know that Julie is not happy with that potential inequality and will disapprove of it.

Recognising the possibility that Stephen might choose not to keep the farm and that Julie would consider that result to be even more unfair we talked generally about methods that might be adopted to ensure she had a share of such proceeds if sold within a certain time following the death. However no conclusion was reached and they decided that, at least pro tem, they would keep the arrangements as simple as possible and just hope that did not happen.

Whilst PM [Pamela] would not expect to go on living in Manor Farm House (Stephen would take it over) she would want somewhere to live (the cottage?) hence account of that might need to be taken in RJM [Roger's] Will (on reflection it could be covered by the residue and/or NRBDT [Nil Rate Band Discretionary Trust].

By reference to the combine[d] ‘non-farm’ assets, the cottage to be left to Julie/Andy in any event, there would be approx 300K gross and it was agreed that pro rata Julie should have 100K, each of her children 75K and 50K to Stephen's daughters ... that would be done by shares rather than amount...

Then I went through my usual NRBDT routine That would be included in both Wills.”

89. The note ends with Mr Lush recording that he would draft a will for Roger for approval and signature prior to 29 January (when Roger and Pamela were due to depart on a holiday).

90. Pamela accepted in cross-examination that the proposal at this meeting was that Stephen would inherit the farm and the house. “At that point that’s what Roger wanted, yes. His hope was that Stephen would go on and inherit his share.” She also accepted that if Roger predeceased her, and Stephen inherited, the proposal was that she would move into Ashburton.
91. Mr Lush said that he assumed the reference to the farm included Roger’s share of the partnership.
92. The draft prepared by Mr Lush no longer exists but it was clearly sent to Roger and Pamela because (as Mr Lush’s further note records) Pamela telephoned Mr Lush on 22 January and provided comments on the draft. The note records:

“Essentially form of Will is okay and they agree with the shares in 6(b).

She gave me the extra details to complete the blanks.

Notwithstanding that I had understood it to be an essential point of our discussion she was concerned by the “Manor Farm House provision” as she had been assuming that she would remain in that in any event. However its future is recognised as being uncertain and outside their sole control because that will depend upon what Geoffrey decided to do with his interest in the farm. As the need for Stephen to inherit that would be vital only if both of them die she accepted my suggestion that such gift should move to clause 6 as thereby it will take effect only if she also has died. If however she survives [Roger] then she will have control of his interest in the farm about which she will have two years within which to make decisions (assuming it is 100% APR [agricultural property relief] then it can go into the NRB [nil rate band]. However thereby she will be able to decide what to do about her occupation of the house (again subject to Geoffrey’s decisions as to the future.”

93. Pamela explained in cross-examination that this change was because “I think I probably meant I would like to stay in it in any event until the time of my choosing” and that although she had no clear recollection of having done so, she and Roger would have reflected on and discussed matters after the meeting.
94. Mr Lush said that the change from the first draft was to ensure that there was something in the will that allowed Pamela to stay in the Farm House until Roger died, to help her with her desire to have some control over staying in the farmhouse if she survived Roger. He went on to say that the decision that Stephen was not to inherit the farmhouse until the second of their deaths arose partly as a result of the issue that Pamela raised as to her accommodation in the event of Roger's death, and partly out of a desire to get something in place before they went off on holiday, with a view to revisiting it at leisure in due course.
95. It was put to Mr Lush that if it was Roger and Pamela’s wish that Stephen would be able to carry on the farm when both of them had gone, then that had to be specifically provided for, and he agreed. He also agreed that the control as a result of the amendment he was proposing to the draft will was in order to give Pamela time to decide at that stage what she wanted to do about the farmhouse and that it was another way of “parking it” in a constructive way. Mr Lush was certain that Roger was adamant that irrespective of the

values, the farm should pass down the generations, and he was very clear about that. In my judgment, Mr Lush's evidence that Roger's central aim was to provide for Pamela was not what he believed at the time; whilst Roger clearly must have intended that Pamela would be provided for, the central aim of the wills was to ensure the continuation of the business by Stephen.

96. Thereafter wills for both Roger and Pamela were prepared by Mr Lush and were signed on 26 January, at a meeting which lasted ½ an hour. Mr Lush's note records:

“By moving the specific “farm gift” to operate only on death of survivor that would leave him/her in control of that asset value as long as was desired but with a probability of a zero, or very small, IHT value for the agricultural property there would always be the facility for it to go into the NRBBDT if at the time of the first death the circumstances of the survivor had become such that he/she did not want to take the benefit of the farm.

Again the point was made that the “paper” value of the respective benefits to each part of the family is very disparate but Roger was adamant that was “right” as the property had passed down the farming “generations” and he considered that should continue regardless of comparative values. (Whilst no comment was made I did have in mind the like situation of Richard the non-farming brother). Although again passing mention was made that it would be somewhat unfair if quite soon after inheritance Stephen sold up and thus did not maintain the family succession but (following the previous discussion) there was no suggestion that they would want to try to guard against that, at least not until they had much more time to ponder and Geoff's situation clarified as, obviously, that will have a bearing on the future farm structure.”

97. The wills as executed establish a nil-rate band discretionary trust (clause 3) and a gift of residue by Roger's will to Pamela (and vice versa in Pamela's will) contingent upon survival for 30 days (clause 4). Clause 5 deals with what would happen if Roger or Pamela (as the case may be) did not survive for 30 days. It (a) gives Stephen “all my share and interest in the freehold property known as Manor Farm Stapleford (including Manor Farm House) and all other freehold farmland in which I have an interest at my death” and (b) gives Pelican Cottage to Julie. Clause 6 gives the residue upon trust for Julie, her children and Stephen's children in various shares.
98. It is clear to me that the will as originally drafted had the gift of the Farm to Stephen as clause 4, but that as a result of the telephone discussion on 22 January it was deleted and moved to clause 5 (which had originally been clause 6, hence Pamela's confirmation in that discussion that the shares in “clause 6(b)” were agreed).
99. It is also clear that the primary intention of Roger and Pamela in January 2007 as recorded by Mr Lush was that Stephen should have the Farm. There were no reservations about this, whether on account of Stephen's behaviour or otherwise. I think Mr Lush was wrong in suggesting in evidence that it was Roger's priority, at that first meeting, to provide for Pamela, as the note is silent on that; Mr Lush did not mention it when first taken through the note in some detail, only mentioning it subsequently, and in my view had it been Roger's priority, it would have been recorded in the note. In so far as Pamela was to be protected, it was by the use of the nil rate band discretionary trust, and I accept Mr Lush's evidence that it was intended that this trust was sufficiently flexible to do that.

100. The gift to Stephen was clearly intended to be the entirety of the farm, hence the use of the words “the freehold property known as Manor Farm Stapleford (including Manor Farm House) and all other freehold farmland”. As Miss Shea says, it is difficult to see that a separate gift of the farmhouse would have been provided for when Mr Lush was aware that no absolute decision could be made as to the farmhouse at that point because Geoffrey co-owned it, and indeed the attendance note of 26 January refers to “the farm gift”. The restructuring of the wills after the telephone discussion on 22 January was in my view, as Miss Shea suggests, to meet a particular concern of Pamela, so as to give her time after Roger’s death to consider her options on accommodation; it was not to secure control over the farm with a view to her being free to decide its destiny as she wished. All of this was clearly at the time contingent on what Geoffrey would decide to do with his share. As Mr Butler later noted, his discussions about what they would do once Geoffrey retired was “in the overriding context of securing succession for Stephen.” He also noted, “Roger and Pamela were concerned that Geoff could bring the whole pack of cards down by leaving his half share in the partnership and the farm to his son or sons.” Mr Butler’s discussions with Roger and Pamela were on the basis that their intention was for Stephen to inherit but for Pamela to have some form of life interest; his statement records, “Included facilitating Roger’s wish to give Pamela some sort of life interest, but to make sure that Stephen would have the farm and the business.” I accept that the 2007 wills said something different, but that was clearly Mr Butler’s understanding. I also accept Miss Shea’s submission that it formed no part of Roger or Pamela’s thinking at that time that leaving the farm to each other first was in any way contrary to, or rendered vulnerable, Roger’s (and indeed Pamela’s) ultimate aim and intention that it should go to Stephen; and that the suggestion to move the farm gift was designed to address a concern that Pamela had with living in Manor Farmhouse after Roger’s death, and for no other reason. Pamela referred in her evidence on many occasions to the fact that under the 2007 will she would have been able to deal with the Farm as she saw fit. Pamela said that “Roger was insistent that it [the Farm] should be left with me to do what I liked with.” In my view, whilst that is right because that is how it was drafted, I cannot accept that this was because Roger “was insistent” or because the survivor of her or Roger would have wanted the final say over whether or not Stephen would inherit. What is completely clear is that Roger’s intention was that “the property was to pass down the various generations, and he considered that should be done regardless of comparative values.” As Mr Lush noted, Roger was adamant about that. In my view Roger either may well not have understood the significance of the change from the draft will to the wills as executed, or he trusted Pamela to put into effect his wishes after his death and to pass the Farm to Stephen.
101. It is hard to conclude other than that the wills as executed did not accurately reflect the principal intention, to pass the Farm to Stephen. There is in my view considerable force in Miss Shea’s criticisms of the failure of the wills to deal with the farming assets or Roger’s share in the partnership (which under the wills would not go with the Farm but would fall into the residuary estate, which cannot have been the real intention) and her characterisation of the wills as a rushed botched job entered into in great haste in case they did not survive their holiday (Mr Lush confirmed in evidence that this was a concern).
102. Mr Butler commented that had he been aware of the proposed wills at the time, he would have advised that if Roger predeceased Pamela, if Pamela then gave the business to Stephen that was “disastrous” from a tax-planning perspective as it would have given

rise to a substantial inheritance tax charge. When Mr Butler met with Roger, Pamela and Justin Pinder (their pensions adviser) it was his clear understanding from what he was told by Roger that Stephen was to have the farm and the business, and that Pamela would have some sort of life interest which would not interfere with the intention of handing the farm on to Stephen. By that stage, it was not thought likely that Geoffrey would leave his interest to his sons, and the only issue was how much Geoffrey wanted to be paid for his share. That evidence was not challenged. It was on that basis that Mr Butler was content to assist with Geoffrey's retirement plans.

Events following Geoffrey's retirement

103. As envisaged by Geoffrey, Roger and Stephen, the farming business began now to be run by Stephen, with Roger taking a reduced role. It is said on Roger's behalf that it was around this time that Stephen's behaviour changed. Pamela's witness statement is full of alleged examples of this, but in the event very few of these were put to Stephen in cross-examination and thus none were relied on save for Stephen's purchase of a Nissan sports car (to which I will return) and one or two minor matters.
104. It was suggested to Mr Collis, who assisted in a game shoot on the Farm, that the gamekeeper Mr Fitchett may have left before the end of the season because Stephen's attitude made it intolerable for him to work there, but Mr Collis denied it, and I accept his evidence.
105. Mr Gale said, in cross-examination, that he knew there were accusations that Stephen had been aggressive towards his father, "and I just couldn't believe that. It's so completely out of character."
106. Stephen was questioned about being angry with Mr Lickard, a neighbouring farmer who drove across a recently drilled field, and whilst Stephen accepts that "I probably went over the top" when dealing with Mr Lickard, it seems to me that this event is particularly trivial.
107. All of the other incidents involving Stephen – save for the matters discussed at the meeting in February 2010, to which I will now turn – post-dated the letter from Roger's solicitors in December 2012 which sought the dissolution of the Partnership, and again I must return to this in due course.

Breakdown in relations in 2009

108. 2009 seems to have been a key year. It seems to me that this marked a serious breakdown in relations between Stephen and Jackie on the one hand, and Pamela, Roger, Julie and Andrew on the other.
109. Roger was finding it hard to adjust to his reduced role on the Farm. Stephen was noticing problems with his father's memory and reliability and consequently he gave him fewer tasks to do on the Farm, which Roger could not accept (he commented to Pamela, "I might as well shoot myself") and which Pamela blamed Stephen for, because she would not accept that Roger was less capable than before. Pamela simply could not accept Stephen as head of the business.

110. It also marked a period when Pamela started to keep Roger away from Stephen. This coincided with a growing feeling, on Pamela's part, that what I have described as the over-arching plan for the Farm's future was unfair on Julie and benefited only Stephen, with whom she was becoming increasingly disenchanted.
111. In 2009, Jackie had a meeting with Andrew at which she told him that Roger wanted Stephen to have the entirety of the Farm and business, and that had been what Roger had always wanted. She told him that she understood Roger was making proper provision for Julie.
112. It seems to me that this was the genesis for Pamela's decision to address the perceived unfairness by introducing Julie and Andrew into the partnership.

The meeting in February 2010

113. The purchase of the Nissan car was the catalyst for a family meeting on 2 February 2010. The minutes are actually headed "Partnership Meeting", but it was attended by Roger, Stephen, Pamela, Jackie, Mr Butler and Andrew. The minutes were taken by Andrew, which were subsequently amended by Mr Butler. It is clear from the minutes that Stephen felt he was doing all the work and that his efforts were not being recognised or appreciated by Roger.
114. A number of matters were raised at the meeting. It was put to Stephen that Roger had said quite a bit about Stephen's behaviour, which Stephen denied, and to Jackie that Roger was making a number of complaints about Stephen, but she said that Roger had very little input into the meeting. My reading of the minutes to a large extent supports Stephen and Jackie's version of events, and Stephen quite frankly accepted that in so far as Roger raised criticisms of him, some of them were valid. In the context of planning for events post-harvest, Roger stressed that he needed to see the plans. He raised the issue of the car purchase, and later said that the Farm was not a piggy bank – he commented on the purchase of a Range Rover and the Nissan when both were not actually required. There was also a discussion about the purchase of a new tractor, which Roger felt was unnecessary. Stephen explained, in cross-examination, that the need for the new tractor was because Roger was no longer well enough to drive the existing tractor safely, and Stephen did not want to raise that as the reason at the meeting. When Jackie mentioned that Stephen needed guidance as to where to plant the game crop, Roger said that it was to be in the same place as before. Roger said that staff management was important and stressed that it was important for Stephen and Roger to be seen to be working together. When Roger said that contacts with third parties needed to be managed professionally, it was Pamela who said that Stephen needed anger management training. Jackie said, and I accept, that Roger became very agitated at the meeting because he wasn't able to cope, and he left (the minutes record that Roger left the meeting before the end). I reject Pamela's suggestion, in cross-examination, that Roger had become ill, and I likewise reject Andrew's evidence that Roger left because he became frustrated at the lack of progress at the meeting; in my view Jackie's assessment was correct. I also accept Jackie's evidence that whilst he made some critical comments about Stephen, Roger did not get cross with him.
115. In his notes to the minutes, which recorded his own thoughts and observations rather than points actually discussed, Andrew noted that

“the purchase of the car is [a] much more fundamental issue, without adequate resolution will continue to act as a log-jam in moving the business forward – [Roger and Pamela] clearly see the purchase of the car as unnecessary and overly frivolous use of farm funds, and the manner in which the car was purchased as being a breach of any essence of partnership ... the unanimous action in this case has caused a significant breakdown in trust (although [Stephen] states he had informed [Roger] prior to the purchase) ... In order to move the business forward in a spirit of trust and good faith, both partners need to come to a resolution of the car purchase issue now in a manner that is mutually agreeable. It seems clear to me that this issue is now of such a magnitude to one of the partners that without it being appropriately acknowledged and addressed, it is difficult to see how relations can be improved markedly.”

116. Stephen’s evidence was that he had indeed spoken to Roger about the purchase of the car, and that it had been bought with his approval. That evidence was not challenged, and I accept it. The minutes of the meeting show that Roger’s involvement in discussions was relatively limited and as I have found, Roger was critical but not cross, and later became distressed and left the meeting. It seems to me that the truth of it is that it was Pamela who deeply resented the purchase, and could not accept that the balance of power had changed since Geoffrey’s retirement. Her diary entry records her frustration that everyone else wanted to focus on moving on whereas she wanted the issue of the car to be addressed. Two other points in the minutes deserve mentioning. First, Mr Butler is noted as saying that the partnership needed to trust Stephen to take more decisions. This seems to me to have been a plea to Roger and Pamela to allow Stephen to get on with things. Secondly, Jackie is noted as saying that Stephen “desperately needs the support and approval” of Roger. This struck me as particularly poignant.
117. It is most unsatisfactory that numerous allegations made against Stephen, all of which I read about in the witness statements, were not pursued in cross-examination and therefore were not relied on. In the circumstances, I entirely reject the suggestion that there was any real change in Stephen’s behaviour following Geoffrey’s retirement.

Changes to the wills in 2011

118. In January 2011 Roger and Pamela met again with Mr Lush. In March of the previous year, 2010, they had made codicils to their 2007 wills removing Stephen as executor. It is clear from what Pamela says, and from Mr Lush’s attendance notes of 5 February 2010 (dealing with the codicils) and 7 January 2011, that there had been some issues with Stephen, but (as Mr Lush recorded at paragraph 6 of his note), “Notwithstanding what has happened they still want Stephen, and his family, to be able to carry on with the farm as long as they wish but not so that he can realise/receive the cash value as, on any disposal, those proceeds would become equally divisible between all of the Grandchildren.” At paragraph 7 Mr Lush noted, “When I asked what they wanted to count as ‘the farm’ for that provision they said that as ‘Manor Farm’ as a business include[d] all of the land etc (not just Stapleford but Winterbourne Stoke and Shrewton plus the cottages etc) all of those should remain with Stephen’s interest along side that previously passed over by Geoff (either outright or in trust).” At paragraph 8, “As to the farmhouse Roger indicated that he would not want Stephen to take that over as he knows he will not treat it properly but I felt it would not be practicable to deal with it separately,

or sell it away from the farm, and Pamela agreed that as it would be an issue only after Roger had died then he would not be around to worry about it. She said that if Roger dies first she would not stay on in the farmhouse (move to cottage next door?). Hence her ongoing residence would not be an issue and if Stephen then moved into the main house so be it.” At paragraph 10, “What should be done with the residue was discussed at some length, their basic view being that as in any event Stephen will have received substantially greater benefit than Julie it should go to her family.”

119. On 20 January 2011 Mr Lush sent a draft of a new form of will which he had prepared, and on 26 January 2011 Pamela and Roger executed new wills. The principal difference between the 2007 and 2011 wills was that in the latter, Stephen’s gift (subject, as in 2007, to Pamela or Roger, as the case may be, being the survivor and inheriting from the other) was defined as, “all my share and interest in the farming business and assets of R.J. Moore & Son (but that shall not include any interest of mine in any freehold property on or from which such business is conducted)”.
120. Pamela stressed several times in her evidence that under the 2011 wills she would still have “control” because of the gift to her if she survived Roger. She also said that in her view, Julie was not being treated fairly; “I think she should have received more. I don’t think it was fair to her ... the amount of money she was going to get. She was going to get two cottages, some cash, and Stephen was going to ... had [*sic*] £10 million worth of assets. I don’t think that’s really fair.” She denied that there was any sort of plan going forward, which in my view rang hollow because it is plain that there was a plan – that Stephen would, eventually, inherit the business, despite what Pamela says was his bad behaviour; that remained unchanged from 2007. When this was put to her, Pamela insisted again on referring to the fact that under the wills, if she survived Roger, she would be able to do what she liked with it. In my view, this line of answers was less than frank, because (in my view, as Pamela well knew) there was never any question of anything happening other than Stephen, eventually, inheriting the business. Even after what was according to Pamela by 2011 a period of bitter unhappiness with Stephen’s behaviour (none of which other than the purchase of the Nissan was relied on by Mr Thomas) the intention was still that Stephen would inherit.
121. What is notable here is that a few months later, Pamela noted in her diary on 16 June 2011, “Andy and Julie to see Chris Lush on future of the farm. Do we want a retirement package or move the directorship from Roger to Julie and Andy?” This appears to be the first mention of Julie and Andy’s potential involvement. There was nothing in Pamela’s witness statement about this, and that page of her diary was not amongst those originally disclosed; the entry only came to light when she was asked to disclose all of her diaries in their entirety. It seems to me to have been a significant step, and one which Pamela ought to have dealt with in her statement. Pamela said that at this point Roger was “adamant” that he did not want Stephen to have any of his share, but again that seems to me to be contrary to what had been discussed with Mr Lush in January 2011. She said that they wanted to introduce Andrew into the business as a balance to Stephen’s behaviour. Pamela was asked whose proposal that was. Her answer was unsatisfactory and to my mind evasive. At first she said, “Because we wanted to provide ... thinking back now, we wanted to provide a counterfoil to Stephen’s behaviour. ... And we thought if the three of them were together, we might get somewhere and stop him behaving in the manner that he was.” When asked, who thought that, Pamela replied, “Well, I did, I suppose”, but when asked if it was her proposal she said, “Well, I don’t know. It doesn’t

say here, does it? ... Well, it was Roger's proposal ... Well I don't know. I can't remember, I'm afraid." And when asked why this step was being taken, Pamela said, "I can't honestly remember." It was then put to Pamela that the meeting with Mr Lush might have been suggested by Andrew and Julie, but she said that wasn't correct. When it was pointed out to her that she had just said that she couldn't even remember this having happened, so how could she state that it wasn't their idea, Pamela said, "that wasn't how things happened." Later on, when Pamela's cross-examination resumed after the weekend break, Pamela said that in fact she and Roger had been at the meeting with Mr Lush, Julie and Andrew. I found this entire passage of Pamela's evidence less than convincing, as was her denial that the likely inference was that by now Andrew and Julie were actively campaigning to take over Roger's share.

122. Mr Lush recalled meeting Andrew and Julie, not on their own, but when they accompanied Roger and Pamela. He could not remember the content of that meeting. He did not keep a note of it.
123. Andrew's statement was also silent on this meeting. In cross-examination he said he clearly remembered going to a meeting, with Julie, to provide support for Roger and Pamela, but – in my view, unconvincingly – could remember no details of this meeting or of its outcome.
124. Julie's evidence was vague in the extreme. She remembered two meetings with Mr Lush but could recall none of the detail.
125. In my view, it is likely that there was a discussion at this meeting about introducing Julie and Andrew to the business. I do not accept that they attended purely to give moral support to Roger and Pamela. I cannot understand how none of Pamela, Andrew or Julie mentioned this meeting in their statements, unless it was a deliberate attempt by all of them not to have done so.
126. Andrew also said that he recalled being asked by Roger to become a partner to work with Stephen, but he could not remember when that was. Again, that was not mentioned in his statement. In my view, there was no such conversation.
127. Pamela's evidence about the reason for wanting to introduce Andrew was wholly unimpressive. At first it was said that he was to be a counterbalance to Stephen. She then said that it was because of Andrew's accountancy, economic and management skills, but this was a very successful business which had no need of such skills. It became clear, when Andrew gave his evidence, that his business experience was principally in relation to information technology. In my view, and irrespective of Andrew's qualifications and experience, the proposal to introduce Andrew (originally with Julie, and then latterly on his own) was wholly unrealistic because Andrew and Stephen did not get on. Pamela insisted that it was Roger's decision to introduce Andrew as a partner, but her explanation was that she would have explained it to Roger, who would have understood what was a very simple concept. Later, in answer to a question I put to her, Pamela said it was her and Roger who had the idea to introduce Andrew as a partner, and then almost immediately back-tracked and said that it was really Roger's idea. I found this evidence evasive and unpersuasive.
128. Similarly unconvincing, to my mind, was Pamela's evidence about when Roger decided that he would not be leaving his share in the Farm to Stephen.

129. Stephen had contacted Mr Butler (as set out in Mr Butler's email to Pamela of 6 October 2011) and they had a short discussion about "the issue of the pressure amongst the family" and that "somehow the family felt that Julie's position had been unfairly treated." Mr Butler's concern, expressed in that email, was "that clearly dissolution of the partnership will lead to the farm being sold which I am sure will be something that collectively you would all want to avoid. However, splitting the ownership of the farm with interest [sic] being held by those not directly involved with the farming will undoubtedly put pressure on the potential for the farm to be sold if not immediately then certainly within the next one to two generations." This was a reference to the suggestion of introducing Andrew and Julie to the business, which Pamela accepted had never been discussed with Stephen. As Pamela also accepted, and it must be right, the basis of Stephen's belief that "Julie's position had been unfairly treated" could only be predicated on Stephen being the sole beneficiary of Roger's interest in the Farm.
130. The email response to Mr Butler was, "I would like to take this opportunity to clarify that it is very much our desire to see the farm continue. Certainly we are not looking to split the ownership of the farm with a non-farming interest. For the farm to continue, it is our belief that we need to introduce a counterbalance to Stephen in the management and control of R J Moore & Sons, and hence a desire to introduce Julie into the business, as Roger takes more of a back seat."
131. Mr Butler then met Roger and Pamela, having first spoken with Stephen, and he put forward proposals in a letter of 15 November 2011, effectively exploring with them Stephen's suggestion that Roger would retire effectively on similar terms to Geoffrey. This, in my view, was wholly consistent with Stephen's belief about his inheritance of the business, but again, in my view unconvincingly, Pamela said that, "... by this time Roger was adamant that Stephen wasn't going to get his share of the business." There was no response to this proposal. Instead, on 12 December 2011, Thrings wrote to Stephen listing a number of issues which are said to impact on the business and saying that Roger wanted to introduce Julie and Andrew into the business. Pamela agreed that this would, to Stephen, be a shocking and hurtful letter to have received, and that the proposal to introduce Andrew and Julie would be a huge slap in the face. It was after receipt of this letter that Stephen came round to the farmhouse and banged on the door hard enough to break a pane of glass. This was one of the incidents which was put to Stephen as evidencing his bad behaviour. In my view, whilst unacceptable, it was wholly understandable that Stephen was deeply upset at having received this letter, out of the blue, with no discussion about it and no forewarning. When asked about this, against the background of the answers I have summarised above, Pamela was only prepared to say that "maybe" the letter was contrary to everything Stephen had expected was going to happen.
132. So when was it that Roger had a change of heart about Stephen's inheritance, for such a change there must have been, according to Pamela; in January 2011 the intention was still that Stephen would inherit, and similarly in October 2011 there was no desire to split up the farm. Pamela said, "I don't know when he made the decision. I'm saying that it was forming in his mind, because of Stephen's behaviour to him and me, that he wouldn't be leaving his share of the farm to Stephen." Pamela accepted that this represented a change of mind; at first, she said this happened as early as 2008 but that cannot have been correct, because it cannot have been as early as that. She then said it was during 2011, but she did not know precisely when, and could not recall whether it was before or after

Julie and Andrew went to see Mr Lush. Later on, Pamela said it was in 2009, but then said it was after the meeting in mid-2011 with Mr Lush. This was, in my judgment, such an important change that I found Pamela's inability to pinpoint it unconvincing, and certainly the assertion in the letter from Thrings of 16 April 2012 which asserted that, "Over the past few years it has been my client's intention to change the structure of the partnership" was wholly false. It was a letter which Pamela, Andrew and Julie helped to draft (see further below). They knew that statement was untrue. That letter also stated, "My client is aware that his decision may come as a surprise to Stephen, however it has not been my client's intention to leave his share to Stephen for some years." Again, that was false, and in my view Pamela, Andrew and Julie knew it to be false. In any event, it would only have "come as a surprise to Stephen" if Stephen believed that his father's intentions were to leave the Farm to him; but Pamela said, "I really don't know why it should have come as a surprise to Stephen". That was wholly disingenuous evidence, in my view. Not only did she help draft the letter, she was entirely aware of why it would have been a surprise to Stephen; it was the opposite to what Stephen had always expected because of the promises his father had made to him. Moreover, Pamela's diary entry for 16 April 2012 (not originally disclosed) records, "Stephen will get a big shock when he finds that our ½ of the farm will be going to Julie and Andy."

133. Similarly, when Stephen through his solicitors responded to the December 2011 letter from Thrings asking for a discussion, the response was, eventually, the proposal for dissolution of the partnership. Pamela was asked why there were no negotiations; she said she did not know and that she was not involved, but then she changed her mind and said she was involved. I agree with Miss Shea that it is inconceivable that Pamela was unaware of what was going on. It was, I think, particularly telling that Pamela said, "If Stephen had behaved himself, and if Stephen had gone on in the way that Roger would have expected, he would have inherited the farm. It was always Roger's hope that he would have inherited the farm. And it's the behaviour that stopped that happening, and I would have changed that 2007 will. I am sorry to have to say that. It's a very, very sad thing." In my view on the evidence, the fact is that Roger was not as prominent in the thinking behind all of this correspondence and the change of heart as Pamela was suggesting.
134. This is reinforced by the evidence in relation to the drafting of the December 2011 letter. Pamela's evidence was that Roger had amended the draft from Thrings, Pamela typed up the amendments and sent the draft back. However, in a diary entry (which had not been one of the diary pages originally provided on disclosure) for 1 December 2011 was the following: "Spent afternoon at Julie's redrafting Neil Barber's letter to Stephen." Faced with that entry, Pamela said that Roger redrafted it before they went to Julie's, but then accepted that Julie would have seen the redraft and that both she and Julie had a heavy input into the draft. Similarly, the diary entry for 9 April 2012 (again, not originally disclosed) records, "Response typed and sent to Russell [Reeves of Thrings]." Pamela said that she only typed up Roger's response. And again, an entry previously undisclosed for 10 April records, "Stephen and Peter Williams responded again by requesting a meeting. Meeting with Julie, Andy and Sam. Decided on a response." And on 11 April (again, not originally disclosed) there is an entry, "Spent an hour on the telephone with Russell [Reeves of Thrings] and then later Andy spoke to him. Draft email came later in the day." Finally on this point, on 21 April another previously undisclosed entry reads, "Finished writing up minutes [I interpose that these were unrelated minutes] and another email for Peter Williams, after family meeting – very bullish saying that Stephen must

understand our concerns.” This appears to have been the email letter sent on 23 April 2012, which said, “the reality of the situation is that Roger’s share of the farm is being transferred to Julie and Andrew regardless of Stephen consenting to Andrew being introduced to the partnership.” It is in my view quite plain from all of this that it was Pamela, Andrew and Julie who were the prime movers behind the correspondence, and not Roger. I find myself unable to accept Andrew’s evidence that Roger was “personally instructing” his solicitor during this period. The fact is, in my judgment, that Roger was by this time playing very little part in events.

The meeting on 4 May 2012

135. Mr Williams was able to persuade Thrings to have a without prejudice meeting to be attended by Roger, Stephen, Mr Williams and Mr Reeves. Mr Lane also attended. At the start of the meeting, it was Mr Williams’s unchallenged evidence that Roger was invited by Mr Reeves to read out a short statement, which he did in a faltering manner, and thereafter took no part in any active debate regarding the issues or the alleged dispute. However, later in the meeting, Stephen spoke and touched on the question of seeds, at which point “it was as if the light had been turned on for Roger” and he then “engaged in a discussion with Stephen in most positive terms. The exchange gave no hint of any difficulty in the relationship between Roger and Stephen which would cause a cessation of their business relationship and (ultimately) an application to the Court on Roger’s behalf to sell the farm and wind up the farming business.”
136. Pamela could not remember if she had written the statement which Roger read out at that meeting. Because of her involvement in drafting letters for the solicitors, I rather suspect that she did.
137. Andrew Lane was at that meeting, apparently as Roger’s spokesman (according to Mr Williams). By that time, as was put to Pamela in cross-examination, Andrew had his own personal interest in the outcome, because he was being touted as a partner and his wife Julie would be inheriting half the farm. Pamela would not accept that Andrew had his own interest in the outcome, which must have been plain to her at the time.
138. Andrew apparently alleged at the meeting that Stephen had had an extra-marital affair or affairs. Pamela said that Roger was very worried that if the outcome was that Jackie and Stephen divorced, Jackie would have a claim over half of Stephen’s assets, which if they included the farm would mean that the unfairness to Julie would be even more marked. And yet it does not appear that Roger reacted to this at all at the meeting. When Mr Williams wrote to Mr Reeves asking for details of these allegations, there was no response. Pamela was unable to say why there was no reply, even though she was sent an email from Thrings about it. When Stephen had spoken to Roger shortly before the meeting on 4 May (on 30 April), he told him that he thought he was being blackmailed (which was a reference to the affairs, about which Andrew and Stephen were later, in October 2012, to have a physical altercation) and asked him what was happening. Stephen’s unchallenged evidence was that Roger replied that he did not know and had nothing to do with it, and when asked why he wanted Andrew introduced into the partnership, said that he had nothing to do with it, even when Stephen pressed him on it. I do not accept as credible Pamela’s evidence that Roger was the prime mover, when in fact by this time it is clear that Roger was taking very little if any part in any of this.

139. I do not propose to say much about the scuffle between Andrew and Stephen which occurred in October 2012. I accept Stephen's evidence that it was prompted by Andrew suggesting they should have a "little chat", which Stephen took to be a reference to a discussion about Stephen's extra-marital affairs, and the matter got out of hand, but I also accept that it was Stephen who was the prime mover. Stephen accepted, without prompting, that this was an unfortunate incident which he greatly regretted. It was a childish squabble which clearly should not have happened. I do not think anything turns on it. A similar point can I think be made in relation to the trivial and silly incident in which Stephen put grease in the lock of Andrew's car. I certainly would not elevate either incident to being examples of how post-2008 Stephen had changed his behaviour intolerably.
140. Of a similar nature, in my view, is the alleged assault by Stephen on his father. Stephen's evidence was that his father had assaulted him, rather than vice-versa. There were no witnesses to this incident. Roger was not taken to hospital, and did not consult a doctor about his injuries, and no medical evidence or photographic evidence has been produced. Again, I do not think that this is an example of a change in behaviour. I think the likelihood is, sadly, that this was an example of Roger's aggressive behaviour brought on by his dementia, in a similar way to which he was noted in the medical evidence as having assaulted Pamela.

The 2012 will

141. On 7 June 2012, Roger made a new will. For the first time, Stephen was not a beneficiary of the farm or the business. Pamela's evidence about the 2012 will was as follows. She remembered a meeting around the kitchen table, "and I think Roger was at the forefront of those instructions at that time." She was "absolutely sure" about that. But she then said, "we had talked through this and we decided what Roger wanted to do with his will at this stage ... Well, Roger would have talked about it, and then ... we decided."
142. On 19 June 2012, shortly after the 2012 will was made, Mr Reeves sent Mr Williams a copy of an undated letter from Stephen to Roger. It is the letter to which I have already referred at 80.1 above. Mr Reeves described the direct contact between Stephen and Roger as "unacceptable" and "upsetting" to Roger. Be that as it may, the letter set out proposals for taking matters forward; it suggested an arrangement as to drawings which would satisfy both Roger and Stephen and which could be put in place with Mr Butler's help; and to make future plans which would make provision for Julie, Andrew and their children. Pamela was asked why this offer was rejected; she said that she did not know, and suggested that Stephen had not in fact written the letter (his unchallenged evidence was that he had indeed done so). It was suggested to Pamela in cross-examination that it was rejected because by now she was adamant that Andrew was going to be a partner and would be taking Roger's share (which was indeed the position under the 2012 will which had just been made) but Pamela did not agree. Of particular note in the letter is the passage to which I have referred above, "You have told me many times in the past that you would be leaving the farm to me." Pamela agreed that such a claim must have been rather shocking to her at the time. It was then suggested to her that the reason why there had been no response to the letter, rejecting the notion that any such statements had been made, was that she was fully aware that those statements had indeed been made; again, that was denied. The letter of 19 June 2012 was one which Pamela accepted she would have helped to draft, but she could not remember why Stephen's conciliatory

proposals were not responded to, but that instead Stephen was reprimanded for having written to Roger directly. When Mr Williams replied to Mr Reeves on 21 June 2012, Mr Reeves responded that, “I have made it clear on more than one occasion that my client will not be transferring his share of the partnership to Stephen. This has been detailed in the written testament of my client and his wife for years. You may call this disinheritance if you wish, but my client and his wife are satisfied that Stephen and his family have enough assets to provide them with a secure future.” When asked about the use of the words, “You may call this disinheritance if you wish”, Pamela – in my view, wholly disingenuously – said she did not know why the word “disinheritance” was used. It can only have been because Roger would indeed be disinheriting Stephen by not giving him what he had always promised he would. When Mr Williams replied on 23 August 2012, he said, “Before all of this started, Roger made it plain to Stephen that he intended to leave the farm to Stephen and make separate provision for Julie and her family.” Pamela did not agree with that sentence and when asked whether Roger was horrified when he read it, she said, “I really don’t know. Probably.” I think Miss Shea was right when she suggested to Pamela that she had no recollection of Roger’s reaction to it because in fact it was what Roger had promised, and that if it was untrue, it would have been dealt with in correspondence.

2013

143. By 2013, Roger’s decline contributed to a very difficult situation in which Pamela increasingly came to take the lead. Stephen’s evidence, which I accept, is that Roger, in his right mind, would never have contemplated litigating against his own son, and that matters between father and son were nowhere near the kind of total collapse described by Pamela and other members of the family. I accept the evidence of Stephen, Geoffrey and others that Roger would have been appalled at the family’s private affairs being exposed to public scrutiny and at the prospect of the farm being split up.
144. When the Defence and Counterclaim was served in 2013, there was a meeting at the Farm at which Roger became very ill; although an ambulance was called, he was not taken to hospital on that occasion. However, a scan conducted some days later following further ill-health suggested that he had in the recent past had a TIA. Pamela said that when Mr Thomas came to explain what proprietary estoppel meant, “when Roger heard that it relied on promises to Stephen, I can remember him putting his head in his hands and shaking his head vehemently, and then he more or less collapsed, and that was when he first had his TIA.” Sam was also present at that meeting; his recollection was that at first Roger’s reaction to being told about Stephen’s claim was quite measured, but that he soon became upset and left the room, and then became unwell. According to Sam, it was Mr Thomas making the linkage between the alleged promises (at which point Sam said Roger shook his head) and the relief sought (a claim to the whole of the Farm) that caused Roger to become unwell. It seems to me that Roger may well have misunderstood that Stephen was not trying to take the Farm away from Roger but was asserting his equity over and seeking a claim in respect of Roger’s share.

Specific findings

(1) Promises

145. For the reasons I have set out above, I accept that Stephen is right when he says that he was promised the Farm and the business. I take into account Mr Thomas’s submission

that the promises were said to have been witnessed only by Stephen and Jackie and that only Stephen can remember specific occasions but I do not accept his submission that Stephen's evidence was highly unconvincing. On the contrary, I thought that Stephen's evidence was reliable, as was Jackie's, and I accept it. Mr Thomas said that the evidence was that Roger was a private man who would not have discussed these matters with others, but again there is clear evidence in my view that in fact he did. I also accept that the point was made in Thorner v Major at [3] that intentions were of no importance, and that the question is whether by words and acts it would reasonably have been conveyed to Stephen an assurance that he would inherit. In my judgment, Stephen has established that on the facts. The promises were more than mere assumptions about what might happen. It strikes me as inconceivable that Stephen was not made the promises when it had been plain for years that he was being groomed to take over the farming business as part of Geoffrey and Roger's over-arching plan.

146. It was suggested by Mr Thomas that at best the statements made were in some sense conditional on Stephen's behaviour. For example, in Uglove v Uglove [2004] EWCA Civ 987 the Court of Appeal upheld the trial judge's finding that the promise was really that the claimant would inherit "if all went well with the business relationship" [20(1)]. The fact is that in the present case the Farm business went from strength to strength, and in my judgment the allegations of bad behaviour made against Stephen are so trivial as to be of no effect.
147. I also take into account Cooke v Thomas [2010] EWCA 227 where the trial judge accepted that the words, "you know this is all going to be yours when I am gone anyway" were held not to be a promise but an indication of intention [72]. Again, it seems to me that whether or not words actually used amounted to a mere indication of intention or were a promise is entirely a factual issue, and in the present case I have no hesitation of resolving that issue in Stephen's favour.

(2) *Reliance*

148. I also accept that Stephen relied on the promises by basing his life on the Farm, and by working on the Farm, without any consideration of any alternative employment, because he truly believed, as he had been encouraged to believe, that in the fullness of time he would inherit the Farm and the business. I expect that Stephen is right when he says that he would not have worked as he did for only modest payments nor would he have carried on living in a bungalow, but in my judgment it is entirely idle speculation to ask what Stephen would have done had he not been made those promises. The fact is that promises were made, and in reliance on them he devoted his entire working life to the Farm and the business. As did the Applicant in Suggitt v Suggitt [2012] EWCA Civ App 1140, Stephen positioned his whole life on the basis of the assurances given to him and which were reasonably believed by him. Stephen's whole-hearted commitment to the Farm and the business precluded him from pursuing any alternatives.

(3) *Detriment*

149. Miss Shea says that detriment and reliance are overlapping features (although it is not suggested that removes the need to establish each element independently). The specific items of detriment are pleaded at paragraph 26 of the Re-Amended Defence and Counterclaim. In summary, Stephen's evidence was this:

- 149.1. Stephen believes he could have found a role elsewhere and would no doubt have been paid far better and probably had far better accommodation;
 - 149.2. From 1991 until the end of 2011 he did not have expensive holidays;
 - 149.3. Generally, Stephen did not have an expensive lifestyle. He liked to spend money on good farm equipment. The one exception was the Nissan.
 - 149.4. He had no company car until 1999 although promised one since 1991.
 - 149.5. He had long working hours, which he would not have done, or would not have done without additional compensation, in alternative employment.
 - 149.6. Stephen said in oral evidence, “if I were to cash in I would be a very wealthy man but I have no intention of cashing in, if we have a good year might be able to afford a holiday or a new car, if not then so be it”;
 - 149.7. The cars belong to the partnership;
 - 149.8. Stephen earns £590/fortnight, of which £190 goes to a pension.
 - 149.9. Jackie works 4 days a week and 1 day on the farm and contributes to their lifestyle independently. So their lifestyle now, even if relevant to the question of detriment, cannot be attributed solely to Stephen’s working on the farm. His children do not go to private school, unlike Julie’s, whose school fees have been paid from the partnership.
150. Stephen was not challenged when giving oral evidence on any of this, and I agree with Miss Shea that this is sufficient to dispose of the objections to the detriment pleaded by Stephen, particularly because Mr Thomas stated that no reliance was placed on any matter not put to Stephen. In my judgment, Stephen did suffer detriment in reliance on the promises.
151. In response, Mr Thomas said that there was no detriment in this case, because first, Stephen has been very well paid as a partner, and secondly he has inherited Geoffrey’s share in the farm.
152. As to the first point, Mr Thomas relied on a schedule attached to his skeleton argument which set out the monetary benefits he said Stephen had received. Whilst some figures may have been derived from the partnership accounts, others were not, and they were not introduced in evidence; the schedule and the supposed benefit was not put to Stephen in cross-examination, nor were they explored in any way with Mr Butler, on whose evidence the figures appear at least in part to be based. Mr Thomas’s point – that the schedule was the subject of a Notice to Admit to which no response was given – is nothing to the point. In the absence of a response, if those figures in the schedule were to be relied on they needed to be adduced as a matter of evidence and put to Stephen.
153. In any event, the schedule contains several unexplained items (which were not explored in evidence). It starts by referring to “*profits allocated to partners (if equal)*” but this is wholly meaningless, because of Mr Butler’s evidence that profit allocation as between partners was, quite deliberately, not equal but was premised on what would achieve the

most favourable tax outcome, and there was no hint in any of the evidence nor was it suggested to any witness that it was intended by the partners that the annual unequal allocation of profits would at some future stage be “equalised”.

154. The schedule also refers to payments for land purchased into a SIPP on Stephen’s account. Mr Butler explained that this was to provide Stephen with a pension provision in later life, in the same way as provision had been made for Roger. Again, neither Stephen nor Mr Butler were asked about this, much less shown and asked to comment on these figures.
155. The schedule refers, without explanation, to “*other drawings*” and to “*further adjustments*”.
156. In any event, Roger’s pleaded response addresses only Stephen’s drawings from the partnership, so only on matters arising since 2002/3, well after the detriment was suffered, and no reply is pleaded to any matter pleaded on Stephen’s behalf except where it relates to the period after Stephen became a partner. I therefore agree with Miss Shea that Stephen’s case on detriment before he became a partner is not challenged.
157. Further, on the evidence – particularly that of Mr Butler, as accepted by Pamela in cross-examination, where she accepted that the annual allocation of profit to each partner was driven by tax considerations – the only reason for Stephen becoming a salaried partner and subsequently an equity partner was for tax reasons, to the benefit of the partnership. Stephen did not acquire any share in the partnership assets, and whilst he had a current account, this did not stand to his credit in the usual way, as Mr Butler’s unchallenged evidence demonstrated.
158. I agree with Miss Shea that insofar as Stephen derived any benefit after he became a partner, this is evidence of, and properly analysed as, the beginning of the fulfilment of the promises, and the result of the tax reduction objectives of the partnership. The equity which, as I have found, had arisen, could not be defeated by the promisor acting in accordance with the promises.
159. Mr Thomas also said that Stephen had not pleaded and proved that he has relied on any promise or that this reliance has caused him any detriment. As I understand it, this is a submission that there was no pleaded case that the detriment had been caused by reliance on the promises, which is demonstrably wrong because paragraph 26 of the Amended Defence and Counterclaim pleads in terms, “In reliance on the promises, the First Defendant acted to his detriment”, and goes on to give a number of Particulars of Detriment; Roger’s pleaded responses to Stephen’s pleaded case on detriment are contained at paragraph 20(2) of the Amended Defence and Counterclaim. I do take into account that in relation to those responses, the contention that Stephen allegedly prioritised motor racing was not put to Stephen and cannot be relied on (in any event, on the evidence in the witness statements, Stephen’s interest in motor racing started only following receipt of Geoffrey’s share in 2008).
160. I therefore can take no account of the matters in the schedule.
161. As to Mr Thomas’s second point, in my judgment Stephen’s acquisition of Geoffrey’s share is wholly irrelevant to the question of detriment. It is right that in one sense the share derived from his work on the Farm and the over-arching plan or intention that he

would inherit the whole of the Farm one day, but it was not given to Stephen in satisfaction of the equity arising from Roger's promises to Stephen in relation to Roger's own share of the partnership, and in any event it post-dated the detrimental reliance. Further, the Partnership actually paid £500,000 for Geoffrey's share, some of which was accounted for by a reduction in Stephen's partnership account, a price which on Geoffrey's evidence was set because of the promise – as well as the over-arching intention – that Stephen would have Roger's share.

(4) *Unconscionability*

162. Mr Thomas contends that it would not be unconscionable for Stephen not to receive Roger's share, (a) because he has already received Geoffrey's share, worth £5m, and (b) because of Stephen's bad behaviour.
163. The relevance of Stephen's acquisition of Geoffrey's share is said by Mr Thomas to be that without Roger, Stephen would not have been able to buy Geoffrey's share, and that as a result Stephen is £5m richer.
164. In my view, not only is the acquisition of Geoffrey's share irrelevant to detriment, it is of no relevance to unconscionability. The question seems to me to be whether it would be unconscionable for Roger to go back on his promise to Stephen in relation to his share, which has nothing to do with Geoffrey's share. As I have pointed out on a number of occasions, the over-arching plan was that Stephen would eventually acquire Roger's share, so that the farm could stay in the ownership of and be run by the next generation of the Moore family. I agree with Miss Shea that were this not now to happen, the unconscionability would be all the other way.
165. As to the alleged bad behaviour, as I have already found, this was so trivial that it could not be said to defeat Stephen's claim. The vast majority of the pleaded allegations of bad behaviour (and most of the many examples in Pamela's witness statement, for example) were simply not put to Stephen and that being so were expressly not relied on.
166. Mr Thomas also says that I should take into account the competing moral and legal claims on Roger's estate, namely those of Julie and Pamela. This it seems can and should be taken into account not when considering unconscionability, but rather when considering the question of how should the equity be satisfied.

(5) *Satisfying the equity*

167. I take into account the principles set out at paragraph 16 above, and in particular the need for a cautious approach to ensure that the relief is appropriate and proportionate. I must also award the minimum equity needed to do justice.
168. The starting point is my finding of fact that Stephen has proved his pleaded case in relation to the promises. It is pleaded that Stephen was told that "the Farm and the farming assets of the Partnership which following the incorporation of the Second Defendant have included the farming assets the Second Defendant ("the Farm Assets") would be his one day." Stephen's pleading goes on to assert, "in the fullness of time take over the Claimant's role in the farming enterprise, and that upon the later of the Claimant's or Pamela's death the First Defendant would inherit the Claimant's interest in the Farm (including for the avoidance of doubt the Claimant's interest under the

Partnership) and the Farm Assets, to be the fourth-generation custodian of the Farm by the Moore family” and seeks a declaration that “the Claimant’s interest in the Farm and the Farm Assets is subject to an equity in favour of the First Defendant”.

169. Thus the pleaded case, which in my view has been made out, is that Stephen’s equity extends to Roger’s interest in (a) the Farm (defined as all of the land comprising Manor Farm; (b) the Partnership; (c) the Farm Assets, being the farming assets of the Partnership including the farming assets of the Company.
170. There is no difficulty in defining what is meant by the Farm.
171. Roger’s interest in the Partnership clearly, in my view, includes his current account with the Partnership. Mr Butler’s unchallenged evidence was that the current account stood both as part of Roger’s interest under the partnership and as assets of the partnership. One can see from how Geoffrey’s current account was treated on his retirement that this was the case, and as Mr Butler explained, there was no question of Geoffrey actually treating the value of his current account as being his – at all times the driving factor was tax efficiency. Partnership profits were understood and agreed to be retained within the business subject to agreed levels of drawings (which were a modest fortnightly payment - £400 in Roger’s case, and £590 Stephen’s case - the additional £190 being used to fund contributions to Stephen’s pension – and otherwise as agreed between the partners, but historically at what Mr Butler described as low levels even for farming partnership). Similarly, in relation to the Company, which was incorporated to reduce the tax liability of the Partnership, the intention was that profits should accrue in effect as partnership profits, albeit they were retained in the accounts of the Company and were not redistributed back into the Partnership. I therefore agree with Miss Shea that they fall to be viewed in the same way as partnership profits. Roger’s share of the Company profits falls to be treated as his current account, and Stephen’s equity attaches to it. In the same way, the directors’ loan accounts were as explained by Mr Butler accounting devices, which would have been cleared by means of the cash receipts of the Company or (if not repaid by then) at such time as the Company was wound up, with the remaining assets at that point being sold back to the partnership (at their by then reduced book value). This being the case, there is no true debt to Roger and so no need to repay him for his share of the value of the assets transferred to the Company. Any notional repayment to Roger of directors’ notional loan would be credited to Roger’s current account within the Partnership, over which Stephen is claiming an equity as part of Roger’s “interest under the Partnership”.
172. In my view, for these reasons, Roger’s interest, over which Stephen has established an equity, extends to Roger’s interest in the Farm, Roger’s current account, Roger’s share of the Company cash and profits, and Roger’s director’s loan account, all fall within the pleaded definition of Roger’s share in the Partnership.
173. Mr Thomas submits that I must take into account, when exercising my discretion, the fact that Stephen has acquired Geoffrey’s share, and ignore the fact that it was acquired after the equity (on his case, if any) was established: see Walton v Walton, unreported, 14 April 1994, para 21, cited with approval in Thorner v Major at [101]. In fact, Lord Hoffmann’s comments in Walton related to unconscionability rather than satisfaction of the equity, and the need in that context to look at whether, in the circumstances currently prevailing rather than at some point in the past, it would be unconscionable for the

promises not to be kept. I have already held that in my view Stephen's acquisition of Geoffrey's share does not affect the question of detriment or unconscionability. The key question it seems to me is whether it would be right – taking into account the approach to the law which I have set out above – to defeat the promises, made in relation to Roger's share, because of Stephen's acquisition of Geoffrey's share. In my judgment that would be a wholly wrong approach.

174. As I noted in another case, Seward v Seward [2014] All ER (D) 168, one of the 19 authorities cumulatively cited to me in the present case, the equitable doctrine should be as flexible as the circumstances allow in order to give effect to the equity; the aim is to look at all the circumstances to decide in what way the equity can be satisfied; the approach is a cautious one, in order to achieve the minimum equity required to do justice; there is a wide range of possible relief; and it not necessarily a question of providing compensation for either the detriment or the reliance or the expectation. It may be necessary to exercise a wide judgmental discretion. Proportionality lies at the heart of the doctrine of promissory estoppel; the court must take into account whether in all the circumstances the promise and the benefit is proportionate to the detriment and the remedy must also be proportionate.
175. Miss Shea submitted that I should exercise my discretion, when deciding how the equity should be satisfied, by mirroring as closely as possible the arrangements which would have obtained had the dispute not arisen. I agree.
176. The effect of this is that both Pamela and Roger should continue to receive what they were intending and expecting to receive, up until their deaths. Stephen will take over the farming for all practical purposes; but the assets of the enterprise which will now be in his name alone will be fixed with the obligation to pay the agreed sums out to support Roger and Pamela going forwards.
177. Roger and Pamela should remain at Manor Farmhouse for as long as that meets their needs, with Stephen responsible for maintaining and repairing it, with the potential to move to Ashburton (on the same terms namely a licence for their lives jointly or severally) should Roger no longer require to reside at Manor Farmhouse and subject to Geoffrey's agreement. Roger and Pamela would continue to receive a weekly sum of £200. Stephen should be required to pay from Partnership funds for all reasonable health and care costs for Roger (and Pamela should the need arise), and Stephen has indicated that he is willing to do this. Subject to that, Roger's partnership share should be transferred to Stephen. Pamela is entitled to dispose of all the non-farm assets she and Roger have accumulated as she wishes.
178. This is, as Miss Shea observes, a just and equitable outcome. It honours what Roger always intended and reflects what would have transpired had the dispute not arisen. It means that the farm can continue to be farmed by the next generation of the Moore family, as in my judgment Roger always intended. It is also in my judgment proportionate to the detriment.

The Partnership

179. Finally, I turn to the question of the nature of the Partnership. Since it is agreed that the Partnership must be dissolved, it might be observed that the question of whether this was a partnership at will – as contended for on Roger's behalf – or a partnership for the joint

lives of Stephen and Roger is irrelevant. It is certainly a question of no bearing on the decision I have reached on Stephen's equitable estoppel claim, but it may impact on costs and I must deal with it.

180. Mr Thomas said nothing about the partnership claim in his skeleton argument other than that the Partnership was a partnership at will; it was dissolved by a notice of dissolution dated 21 December 2013; that Stephen accepted that the Partnership could not continue. The question of the Partnership was not mentioned in Mr Thomas's written closing submissions, and was originally not addressed in his oral closing. However, upon Miss Shea's query as to what his position was, he did address it orally after the weekend break, just prior to Miss Shea's closing submissions.
181. In relation to the nature of the Partnership I summarise with approval Miss Shea's closing submissions.
182. Paragraph 4 of the Amended Particulars of Claim relies upon a purported notice of dissolution dated 21 December 2012. Roger's reasons for alleging that the partnership should be dissolved rely on alleged aspects of Stephen's conduct, which are particularised at paragraph 6 of its Amended Particulars. In his Defence, Stephen denied both limbs of the Partnership Claim. His reasons are set out at paragraphs 16-21 of the Re-Amended Defence to Amended Particulars of Claim and Counterclaim. In summary, Stephen claimed that the Partnership was a partnership for the joint lives of Stephen and Roger, rather than a partnership at will. As such, it could not be terminated by means of the notice of 21 December 2012. Stephen further denied that he had behaved in the manner alleged by Roger and/or had behaved in such a way that would justify an order dissolving the partnership as pleaded. However, Stephen accepted that the partnership ought now to be dissolved given that Roger now lacks capacity to conduct partnership business, but not on account of his alleged behaviour, as pleaded by Roger.
183. A partnership at will is only assumed in the absence of an express or implied agreement to the contrary. Stephen says that there was an agreement implied in the present case all the circumstances surrounding making Stephen an equal partner in 2008 that this would be a partnership for the joint lives of Stephen and Roger. At that stage it had never been contemplated by anyone that the Partnership would not endure until Roger's death. The concept of dissolution of the Partnership was unknown to Roger and Stephen, and if anyone had asked them in 2008 whether it would have been permitted under the Partnership for one partner to seek to terminate the Partnership prior to death, the response would have been negative. I agree with Miss Shea that the basis of the planning in 2008 is compelling support for the implication of an agreement that the Partnership was to be for the joint lives of Roger and Stephen, and that this was borne out by the evidence at trial: there was no suggestion, from any of the witnesses, that the partnership was intended to endure for anything other than the lives of the partners; nor would Geoffrey's gift, and the planning in relation thereto, have made sense on any other assumption.
184. Roger claimed that the Partnership should be dissolved on account of Stephen's behaviour. In support of the claim for dissolution, Roger relies on sub-paragraphs (c), (d) and (f) of section 35 of the 1890 Act. These are:

(c) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business

(d) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him

(f) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

185. The matters on which Roger originally relied in support of this claim are set out at paragraph 6 of the Amended Particulars and related to Stephen's alleged behaviour. Since most of those matters were not put to Stephen in cross-examination and no reliance is being placed upon them, they do not fall to be considered.
186. The only matter that was put to Stephen from the pleaded list of allegations (albeit indirectly) is that set out at paragraph 6(j) of the Amended Particulars of Claim, by which Stephen is accused of having "molested" Roger Moore and his family "by way of violence, threats, pestering and other forms of harassment" prior to 5 February 2013. Five incidents were put to Stephen in cross-examination, which may arguably be said to fall within the complaint described in paragraph 6(j) of the Amended Particulars, namely the scuffle with Andrew Lane; the broken pane of glass; the grease on Mr Lane's car; the incident in which the key to the Land Rover was broken; and the incident in the farmhouse involving Stephen and his father, where it is alleged there was an assault.
187. I have already dealt with these incidents in relation to Stephen's claim. These incidents either individually or collectively do not justify an order for dissolution under section 35 of the Partnership Act 1890.
188. The incidents have nothing to do with the business of the partnership or how it is carried on: only three of them actually involve the partners; the other two involved Andrew Lane, who is neither a partner, nor a supplier or contractor to the business. There were three other minor incidents, which did involve the two partners, but none of those incidents arose in connection with, or have anything to do with the partnership's business or how it is conducted. It was not suggested to Stephen in cross-examination that his object in behaving in the manner alleged was to prejudice partnership business or that this had been the result of his actions.
189. In so far as Stephen's attitude to Roger had changed, Stephen's evidence was that this was because of Roger's ill health, and I agree with that evidence. It was consistent with the many examples of problems that had arisen on and around the farm as a result of the deterioration in Roger's health, some of which I have mentioned above. Stephen was not challenged on any of these incidents or about his genuine concerns for his father's well-being and the safety of operations on the farm, where Stephen is of course also responsible for his staff. His account was in my view wholly consistent with the medical evidence of Roger's deteriorating health.

190. I therefore accept Stephen's account of the change in his own behaviour towards his parents. Either separately or cumulatively they do not justify an order for dissolution under section 35(c) of the Partnership Act 1890.
191. For the same reasons, I also reject Roger's claim that the partnership should be dissolved pursuant to sections 35 (d) and (f). There is no evidence that it was not reasonably practicable for the partnership to continue on account of these five incidents, none of which had anything to do with the partnership. Nor would it be just and equitable to dissolve the partnership on account of these incidents alone. This was a long standing and extremely successful partnership, which both parties having (until very recently) wished to see continued above all else. It would take more than a few minor misunderstandings to make it either just or equitable to bring that relationship to an end.
192. It follows, in my view, that the only basis upon which the Court, had it been asked, would have made an order for dissolution would have been as Stephen pleaded, namely that it should be dissolved because of Roger's ill health.

Conclusion

193. The questions posed at paragraph 14(1) to (4) are all answered in Stephen's favour.
194. In my judgment, the result is that Stephen has established his entitlement to an equitable interest in Roger's share in the Farm and the Farm Assets, which includes Roger's current and capital accounts, Roger's share of the Company cash and profits, and Roger's director's loan account, all of which fall within the pleaded definition of Roger's share in the Partnership. This interest is to be subject to the points made at paragraphs 176 and 177 above.
195. As to the Partnership, in my view this was not a partnership at will but a partnership for the joint lives of Stephen and Roger. It is common ground that the Partnership falls to be dissolved, but in my judgment that is only on the basis that it could not continue because of Roger's lack of capacity, and not for the reasons set out in the Amended Particulars of Claim.
196. I invite counsel to agree a form of order reflecting my findings, and if possible to agree all other consequential matters. If it is not possible to reach agreement, there will have to be a further hearing.

(End of Judgment)