Neutral Citation Number: [2025] EWCA Civ 1612

Case No: CA-2024-002180

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY, TRUSTS & PROBATE LIST (ChD)
His Honour Judge Russen KC, sitting as a Judge of the High Court
[2024] EWHC 1581 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/12/2025

Before:

LORD JUSTICE LEWISON
LORD JUSTICE NEWEY
and
LORD JUSTICE NUGEE

- -

Between:

MATTHEW HALSTEAD COBDEN	**Claimant/ Respondent**
- and -	
DANIEL HALSTEAD COBDEN	**Defendant/ Appellant**

- -
- -

James Pearce-Smith (instructed by **Stephens Scown LLP**) for the **Appellant**
Stephen Jourdan KC and Ciara Fairley (instructed by **Ebery Williams**) for the **Respondent**

Hearing date: 25 November 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 12 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. In this appeal, the appellant, Mr Daniel Cobden, challenges the decision of His Honour Judge Russen KC ("the Judge"), sitting as a Judge of the High Court, to make an order along the lines of that made in *Syers v Syers* (1876) 1 App Cas 174 ("a *Syers* order"). The appellant contends that, the partnership between himself and the respondent, Mr Matthew Cobden, having been dissolved, the Judge ought to have ordered its assets to be sold on the open market, with permission for each partner to bid. Instead, the Judge's order allowed the respondent to buy the appellant's interest in the partnership at a price set by the Judge by reference to expert valuation.

2. For convenience, and without any disrespect, I shall refer to all members of the Cobden family by their first names in what follows.

Narrative

3. This section of this judgment is principally derived from the Judge's judgment ("the Judgment").

4. Daniel and Matthew are brothers. In 1998, their parents passed on the farming business which they had been carrying on at Witcombe Farm at Ash in Somerset to their three sons: Matthew, Willy and Daniel (in order of age). Between then and 2006, the three brothers continued the business as partners in equal shares.

5. By 2006, Matthew and Daniel were both married: in Matthew's case to Hayley and in Daniel's to Georgina. Daniel and Georgina already had a son, born in the previous year, while Hayley gave birth to a daughter in 2006 and to a son in 2009. Georgina, whose maiden name was Parris, comes from a family with a farm near Taunton.

6. Willy left the partnership in 2006, with Matthew and Daniel buying him out. Matthew and Daniel subsequently carried on the partnership in equal shares until it was dissolved in August 2022. There was no formal partnership agreement and so the partnership was at will.

7. At about the time that Matthew and Daniel bought Willy out, there was, on the Judge's findings, a crucial conversation between them. The Judge said this about it in the Judgment:

> "348. I find that there was a conversation (the 2005/2006 Conversation, as alleged) during which Daniel did say to Matthew that one day he would have to buy Daniel out of the Partnership. I accept Matthew's evidence that this took place at around the time they bought out Willy's interest in the Farm. Willy's exit from the business explains why they had the conversation directed to Daniel also leaving at some point. The fact that they had just had to raise the money to buy out Willy explains why they recognised it might not be for some time. That same fact explains why Matthew referred in his evidence to the need to 'tread softly' with Daniel. Matthew did not want to upset Daniel in a

> way that might lead to Daniel's departure at a time when Matthew did not have the financial resources for a further buyout.
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> 349. I also find that the 2005/2006 Conversation took place just after Daniel had told Hayley that Georgina did not want to live at Witcombe and that he would have to move. I accept Hayley's evidence on this point and her evidence that she had a number of conversations with Georgina in which Georgina said she wanted to live in Taunton. They included the conversation, at the time when The Old Dairy was being converted to a home, that Georgina would not want to pay for anything that she could not pick up and take with her.
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> 350. The 2005/2006 Conversation provides the basis for Matthew's expectation that, at the end of the Partnership between the two brothers, he would be entitled to buy out Daniel at a fair price."

8. In 2013, the partnership began building a new dairy unit. It was completed in 2015 and led the partnership to expand its milking from some 300 cows to about 1,000. Mr Michael Townsend, who is a director of Savills based in the firm's Exeter office and was the expert instructed to value the farm's land and buildings for the purposes of these proceedings, said that the dairy unit is one of the largest in the country.

9. The herd is not itself an asset of the partnership. It is owned by Cobden Farms Limited and leased back to the partnership. Cobden Farms Limited is a wholly owned subsidiary of Cobden Investments Limited. Following the death of Matthew and Daniel's father in early 2022, Cobden Investments Limited has been owned as to 12.5% by Matthew, 12.5% by Daniel and 75% by their mother, Gill.

10. In recent years, the partnership has achieved large profits. In 2023, these rose to more than £800,000.

11. The Judge found that Matthew was "the driving force behind the business" and that the dairy unit "was and very much remains Matthew's 'baby'": see paragraph 217 of the Judgment. Matthew, the Judge said, is "the brother who is prepared to fight for the interests of the Cobden family and to see any financial rewards ploughed back into the Farm": paragraph 215. In contrast, Daniel "was not really interested in the creation of the Dairy Unit" and his "real interest lies in farm machinery and vehicles": paragraph 217.

12. In 2021, Matthew and Daniel considered whether to buy Bearley Farm, which is nearby. However, in late June of 2021 Daniel told Matthew that he did not want to purchase Bearley Farm or to make any further investments with him. Matthew was very disappointed and angry with Daniel, and in October 2021 a discussion took place about Matthew buying Daniel out. In March 2022, Matthew was further angered when he learned from Daniel that Bearley Farm had been bought by Georgina, other members of her family and a business associate of Georgina's brother. The Judge found in paragraph 229 of the Judgment that it was Daniel's decision that the

partnership should not purchase Bearley Farm which "really precipitated the dissolution of the Partnership".

13. On 6 April 2022, Matthew offered to buy Daniel's share in the partnership together with his interests in two buildings and in Cobden Investments Limited for £3 million. Mr Mike Bray, who had acted as an independent consultant for the partnership since 2011, had calculated by reference to a report which Mr Townsend had prepared for HSBC in January 2022 that Daniel's interests in the partnership, the buildings and Cobden Investments Limited had a value of £2.9 million. Mr Bray said in evidence that Matthew had decided to ask HSBC to fund a payment of £3 million "so that he could offer something over the odds to Daniel".

14. Daniel did not go back to Matthew on his offer and communications between the brothers ceased. By the summer of 2022, it was clear that relations between them had broken down to such an extent that the partnership could not continue over the long term. On 15 August 2022, Daniel offered to buy Matthew out of the partnership and his interests in the other assets which had been the subject of Matthew's £3 million offer for £3,852,500. In the event, it was Matthew who served notice of dissolution, on 25 August 2022.

15. The Judge said this about events in 2021-2022:

> "351. I accept Matthew's evidence that Daniel gave further encouragement for that expectation [i.e. that 'at the end of the Partnership between the two brothers, he would be entitled to buy out at Daniel at a fair price'] by reacting positively to Matthew asking him in October 2021 whether he would like to be bought out. Allowing for the inconsistencies in Daniel's account of this conversation … , I believe that Daniel's own evidence provides some recognition of this encouragement. Matthew acted on the conversation by working with Mr Bray on the figures for a buyout proposal, approaching HSBC for an indication that they would lend him the money, and then making his offer to Daniel on 6 April 2022.
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> 352. Matthew's expectation that he would be able to buy out Daniel, if they could agree upon a price, was only undermined after Daniel and Georgina met Mr Butler [a chartered accountant and adviser to Georgina's family] on 11 April 2022. Therefore, until that meeting, followed later by Daniel's offer to buy out Matthew in August 2022, the expectation throughout almost the entire life of the Partnership was that Matthew would at some point become the sole successor to the Farm on the (implicit) understanding that he would pay Daniel a fair price to become so."

16. Matthew issued the present proceedings on 26 August 2022. By them, Matthew sought a declaration that the partnership had been dissolved (or, alternatively, an order

for dissolution); a declaration that Daniel was required to sell his interest in the partnership at a fair value by virtue of a term of the partnership or because Matthew had the "benefit of an equity"; and consequential accounts and inquiries.

17. In August 2023, Mr Townsend valued the agricultural land at the farm at £5,050,000 and the farm buildings at £2,430,000. At the trial, which took place in May 2024, Mr Townsend said that the land might have increased in value by £150,000 to £200,000. He also explained that his figures reflected a tolerance of 5% either way, that "the vast majority of his valuations had predicted the eventual sale price quite accurately" and that, while the absence of directly comparable evidence made the valuation of the farm more challenging than for a standard type of residential property, that did "not make [him] any less confident in the resultant figure because of the way [he had] approached it": see paragraphs 325, 327 and 329 of the Judgment.

18. So far as livestock, vehicles, machinery, fodder and standing crops are concerned, in a report dated 14 September 2023 Ms Sally Mitchell and Mr Tom Mellor, who are RICS Registered Valuers, gave the livestock and deadstock a market value, as at 15 August 2023, of £3,093,886.50. Updating the figures to 29 April 2024, the livestock was valued at £660,319 and the deadstock at £1,870,064, giving a total of £2,530,383.

19. The Judge concluded that Matthew was entitled to a *Syers* order on the basis of a "proprietary estoppel-ish" equity. For the purposes of his order, the Judge took the value of the partnership's property (before incumbrances) to be £11,040,000. He explained his calculations as follows:

> "413. My acceptance of Mr Townsend's evidence meant that, adopting (a) the median of £175,000 for his estimated range of increase in land values between August 2023 and trial and (b) Matthew's concession that Daniel should be given the benefit of Mr Townsend's 5% margin of tolerance, the land and buildings are to be valued for the purpose of the order at £8,037,750. In his counsel's closing submissions Matthew offered to round this up to £8,040,000 and I will therefore act on that higher figure.
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> …
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> 416. In relation to Mr Mellor's crop valuation, Matthew's counsel also recognised that the completion date under the *Syers* order was likely to take place at a time when the crops currently growing have matured. Matthew therefore proposed that the higher August 2023 figure of £1,122,306 for fodder and standing crops should be used in place of the May 2024 figure of £646,944. Otherwise, the figures to be adopted from the May 2024 reports by Ms Mitchell and Mr Mellor are £660,319 (livestock), £707,300 (tractors and vehicles) and £509,820 (machinery and equipment). These valuations come to a total of £2,999,745 which (given that the August 2023 total was over £3.093m) I propose to round up to £3m."

The appeal

20. It is Daniel's case that the order which the Judge made flies in the face of the principles which can be derived from the decision of this Court in *Bahia v Sidhu* [2024] EWCA Civ 605, [2025] Ch 55. *Bahia v Sidhu*, he said, established that a *Syers* order can be made only in "exceptional circumstances", and the present case did not fall within any of the four categories where, as was explained in *Bahia v Sidhu*, "exceptional circumstances" have been found to exist or it has been envisaged that there might be justification for departing from the general practice of ordering a sale. In any event, the supposed "proprietary estoppel-ish" equity was not established on the facts. Further, the Judge was wrong to make a *Syers* order on the basis of the expert valuation evidence.

21. The issues to which these contentions give rise can be conveniently addressed under the following headings:

    i) The circumstances in which a *Syers* order is permissible;

    ii) The equity found by the Judge; and

    iii) Expert valuation.

The circumstances in which a *Syers* order is permissible

22. Section 39 of the Partnership Act 1890 provides as follows:

> "On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm."

23. Where the partners have not reached an agreement to contrary effect, the Court will normally order the assets of a dissolved partnership to be sold. In *Bahia v Sidhu*, Andrews LJ, with whom Arnold and Nugee LJJ agreed, observed in paragraphs 2-3 that, "[i]n the absence of agreement, the court has to do its best to achieve a fair outcome, which involves seeking to maximise the realised value of the partnership assets for the benefit of all the former partners", and that "[t]he way in which this is normally achieved, if the assets are capable of being sold, is by directing a sale in the open market, usually at auction, but sometimes by private treaty". Andrews LJ explained in paragraph 27:

> "The rationale which underlies the normal practice is that a sale on the open market will usually be the best means by which to achieve a full and fair value for the partnership assets. The

> partners can test the market with competing bidders in just the same way as they would if they were selling their own property. If one of the partners has a particular interest in acquiring any of the partnership property, an open market sale will ensure that he pays a fair price for it."

24. However, Andrews LJ also noted, in paragraphs 26 and 28, that "[t]here is no absolute rule that partnership assets be sold upon dissolution" and that "there may be cases in which an open market sale would not be the best means of achieving full value, or would be unfair". She referred in this connection to *Hammond v Brearley* [1992] 12 WLUK 185, where Hoffmann LJ had said that *Syers v Syers* "shows that in exceptional cases the court has a discretion to take a different course, such as allowing partners who wish to continue the business to acquire the share of another partner at a valuation".

25. In *Syers v Syers*, the plaintiff was held to have a one-eighth interest in a partnership at will which he had entered into with his brother, the defendant, in respect of a music hall and tavern. The House of Lords concluded that the appropriate course was not to direct a sale of the partnership assets but to make an order under which the defendant would buy the plaintiff's share on the basis of a valuation.

26. Lord Cairns LC said at 183-184:

> "My Lords, it is very true, as was said at the Bar, that on dissolving a partnership of this kind the ordinary course would be for the Court to direct a sale of the assets, and, if necessary, a sale of the concern as a going concern, and to give liberty for proposals to be made by either party to purchase it before the Judge in Chambers. My Lords, those provisions are moulded in every case by the Court to meet the circumstances of the particular case; and it appears to me that, looking at the nature of this business, and looking at the very small interest which was taken in it by the Respondent, it would certainly not be desirable in this case to have a sale, or to bring these premises to the hammer for the purpose of ascertaining what sum ought to be given for them."

Agreeing, Lord Hatherley said at 190-191:

> "I think, my Lords, that the valuation proposed is all that under the circumstances of this case the Plaintiff is entitled to ask. I do not think he is entitled, under the engagement he has entered into, to ask for a sale of the concern, regard being had to the amount of his interest in it and to the nature and character of that concern, which of course the Court of Chancery is always bound to look to, and the injury that might result from having a sale of a business of such a description as this is."

Likewise, Lord O'Hagan said at 192 that he thought "the proposed solution of the difficulties of the case is the most acceptable, as being most in accordance with the language of the parties, and best calculated to do justice to both".

27. In *Bahia v Sidhu*, Andrews LJ, after considering *Syers v Syers* and other authorities in detail, said this:

> "44. Drawing all those threads together, it seems to me that the types of case in which 'exceptional circumstances' have been found to exist, or where it has been envisaged there might be justification for departing from the general practice of ordering a sale, are: (i) where one partner has a very small stake in the partnership, and selling the partnership business as a going concern would create disproportionate injury to the majority partner(s) and/or to third parties such as customers of the business; (ii) where, as in *Hammond v Brearley*, a sale in the open market is obviously not going to maximise the value of anyone's share in the partnership, because the assets are worth little or nothing if sold separately from the goodwill, and selling both together would be disproportionate; (iii) where, even if its terms were breached, the partnership agreement makes provision for a buy-out on termination of the partnership, or it can properly be inferred that this is what the contracting parties intended, and (iv) (possibly) where it is established that one partner intends to use the auction process to drive up the price artificially, to the detriment of the other partner who wants to buy the property.
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> 45. All those are examples of situations in which a sale by auction would not serve the interests of justice. It would not maximise the value of the assets or, even if it would, it would unduly favour one of the parties or unduly disadvantage the other(s).
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> 46. On the other hand, there is no reported authority in which the discretion recognised in *Syers v Syers* has been exercised, or even recognised as arising, in the normal situation where the assets can be sold in the open market without creating any unfairness, and the partners are unable to agree on an alternative."

28. On the facts of the case before her, Andrews LJ concluded that the first instance judge had been wrong to depart from the normal practice. The judge had wrongly approached matters on the basis that there was "an overarching discretion to make whatever order the court considered to be just (even if there was nothing exceptional about the case, and a sale on the open market would produce a just result) and not as a discretion to depart from the normal practice in circumstances when adopting that practice would *not* do justice between the parties": see paragraph 48. There were in fact no circumstances which would justify the "exceptional" course which the judge had adopted and a "sale would achieve a just outcome": paragraph 63. Andrews LJ observed in paragraph 53:

> "It is self-evident that in a case such as this, where the property can be readily sold at auction, the amount that an arm's length purchaser is willing to bid for it will be a better measure of the

> value of the property in the open market than a virtually unchallengeable expert opinion as to what it might have fetched had it been put up for sale."

29. In the present case, following a careful examination of the authorities, the Judge concluded that *Bahia v Sidhu* identified examples of situations in which a *Syers* order might be apt rather than purporting to provide a comprehensive list and that such an order can also, potentially, be justified by considerations akin to those which arise under the doctrine of proprietary estoppel. He said in paragraph 191:

> "iv) The nature of the discretion and the purpose to be served by its exercise – that of achieving justice between the partners on the facts of the particular case – means that the categories of case suitable for *Syers* relief cannot be exhaustively identified. Examples of some were given in *Bahia v Sidhu*, at [44]. However, the 'exceptional' nature of the relief does not mean that a certain jurisdictional bar has to be met or that some strange or unusual (or already judicially recognised) circumstances must be established. Instead, the test is whether, as an exception to the normal rule, a *Syers* order can by justified on the basis it would serve the interests of justice on the facts of the particular case: compare *Bahia v Sidhu* at [45].
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> v) One other type of case where a Syers order may be justified is where, unlike an order for the sale of the partnership assets, it accords with the spirit of the parties' agreement or, it was put in *Bahia v Sidhu*, at [40], is consistent with their contractual intentions even if it is not justified by the rigid analysis of the contractual position between them. The court might be persuaded that the particular circumstances surrounding the dissolution mean that a full-scale winding-up through a sale would be unjust because it is contrary to their manifest intention or understanding reached not at the beginning of the partnership but instead near the end of its life: compare *Hammond v Bearley*.
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> vi) Likewise, in my judgment, a Syers order may be justified by reference to wider equitable considerations – akin to those which arise under the doctrine of proprietary estoppel – if it concludes that one partner has established an 'equity' that operates to qualify what would otherwise be the means of achieving the result ordained by section 39. In my judgment this must follow from the nature of the discretion (directed as it is to a decision upon the manner in which the partnership assets are to be 'applied'), the terms in which it has been described by the appellate courts,

> and the express recognition by section 46 of the 1890 Act of a place for the rules of equity. If the court is able to look beyond the strict terms of any partnership contract or deed in its exercise of the discretion, then it is clearly justified in approaching the exercise of its discretion by reference to such equitable considerations in a case where there is no express contract between the parties and the dissolution of their partnership is governed by a provision (section 39) which does not dictate a particular method for achieving that result."

30. The three main elements of proprietary estoppel were identified by Lord Walker in *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776, at paragraph 29, as "a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance". As Robert Walker LJ, Lord Walker had earlier, in *Gillett v Holt* [2001] Ch 210, at 225, noted that "the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine" and that "[i]n the end the court must look at the matter in the round". Where such an equity is demonstrated, the Court "will normally start with the assumption (not presumption) that the simplest way to remedy the unconscionability constituted by the repudiation is to hold the promisor to the promise": see *Guest v Guest* [2022] UKSC 27, [2024] AC 833, at paragraph 75, per Lord Briggs. The aim, as Lord Briggs said in *Guest v Guest* at paragraph 94, is "the prevention or undoing of unconscionable conduct". Lord Briggs went on:

> "In many cases, once the equity is established, then the fulfilment of the promise is likely to be the starting point, although considerations of practicality, justice between the parties and fairness to third parties may call for a reduced or different award. And justice between the parties may be affected if the proposed remedy is out of all proportion to the reliant detriment, if that can easily be identified without recourse to minute mathematical calculation, and proper regard is had to non-monetary harm."

31. The Judge explained in paragraph 192 of the Judgment that it was recognised by Matthew's counsel that they were arguing for "an unusual application of the doctrine of proprietary estoppel". Proprietary estoppel is usually invoked with a view to acquiring a proprietary interest. In contrast, as the Judge noted in paragraph 194, proprietary estoppel is in the present case "relied upon to support a case about how the court should treat the parties' mutual and undisputed proprietary interests for the purposes of their *disposal*".

32. I nonetheless agree with the Judge that a "proprietary estoppel-ish" equity such as Matthew has contended for is capable of justifying a *Syers* order. Success in a proprietary estoppel claim can of course result in the claimant acquiring title to property. That being so, I cannot see why as a matter of principle establishing the ingredients of such a claim should not be capable of having the lesser effect of determining how property in which a claimant has an interest should be disposed of.

If the elements of proprietary estoppel can make it equitable to order a full transfer of ownership, why should they not give rise to an equity making the usual order for the sale of partnership assets unfair? Further, I agree with the Judge that *Bahia v Sidhu* does not preclude that conclusion. Andrews LJ explained in paragraph 44 of her judgment in *Bahia v Sidhu* that there were four types of case in which "exceptional circumstances" had "been found to exist, or where it has been envisaged there might be justification for departing from the general practice of ordering a sale". Far from suggesting that there could not be any other circumstances in which a *Syers* order could be appropriate, Andrews LJ said in paragraph 45 that the types of case to which she had referred were "examples" of situations in which a sale by auction would not serve the interests of justice. Earlier in her judgment, in paragraph 28, Andrews LJ had spoken in more general terms of "cases in which an open market sale would not be the best means of achieving full value, *or would be unfair*" (emphasis added). Like the Judge, I consider that a "proprietary estoppel-ish" equity is capable of making an open market sale "unfair" and of justifying a *Syers* order instead.

The equity found by the Judge

The Judgment

33. In paragraph 383, at the start of a section of the Judgment headed "Conclusion on the Exercise of Discretion", the Judge said that he had "no doubt that Matthew is entitled to the *Syers* order which he seeks". In paragraph 390, the Judge commented that Daniel's case to the contrary paid "no regard to any equity which one partner may have acquired against the other, during the course of the Partnership, which has no clear monetary value but which is sufficient to provide grounds for concluding that a liquidation of the assets would work an injustice". The Judge went on to explain:

> "392. If it [is] necessary to summarise the basis of my decision on the facts of this case, for the purpose of adding a fifth example to those given in *Bahia v Sidhu*, at [44], and with the language of the third and fourth examples given by Andrews LJ in mind, then the '*exceptional circumstances*' justifying that conclusion can be summarised, albeit rather lengthily, as follows:
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> > 'The equal partners in a partnership at will have, since its inception, shared an understanding that one partner would himself carry on the business when the partnership eventually comes to an end, by being permitted to buy out the other partner at a fair price to be determined at that end point, and that partner has devoted himself accordingly to the firm's business and its development in anticipation of that event. The understanding is sufficiently clear from the dealings between the partners and the subsequent reliance upon it (throughout the life of their partnership) sufficiently identifiable and substantial to support the conclusion that it would be unfair and inequitable for the other, at the partnership's end, then to insist that both partners' shares in the partnership assets should be liquidated through their sale. Any consideration of the "detrimental" nature of the first

> partner's reliance ("*the partner has devoted himself accordingly*") must make allowance for the fact that the relationship between the partners arises out of their shared endeavour in making profits and that he has benefited equally from any profit during the life of the partnership; and also that any unequal injections of capital will be reflected in the partners' respective capital accounts. Nevertheless, the court is entitled to consider his individual efforts in developing the partnership business and to do so with particular focus upon a comparison with the business as it was at the partnership's inception and the relative efforts of the other partner in that regard. The understanding and reliance upon it give rise to an 'equity' in the first partner which may operate to prevent the liquidation of the partnership's assets if the court concludes that, in all the circumstances, an order for sale would be unfair and unjust. Other factors, such as the likely adverse impact a sale may have on third parties (including employees of the business and others whose financial interests may be damaged by a sale) or upon the business's customer base, may feed into the court's assessment of the equity in deciding what is fair and just. The court is entitled to act upon the equity where expert valuation evidence supports the conclusion that the price payable under the *Syers* order is equivalent to what the other can reasonably have expected to receive for his own share. The likely costs of a sale and any potential adverse tax consequences resulting from a sale may be factored into the court's comparison of the two. The court may act upon the equity despite any suggestion by the second partner that he would be willing to pay more for the first partner's share than is offered in return, as the price of himself carrying on the business, and notwithstanding the prospect that such a sale might have produced a greater financial return for him than that indicated by the valuation evidence accepted by the court.'
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> 393. The 2005/2006 Conversation between Matthew and Daniel took place at the inception of the Partnership (with the October 2021 conversation in effect affirming their understanding in the last year of its life). I recognise that there may be other cases where the relevant understanding was reached at a later stage in the life of the partnership and thereafter acted upon in a way which gives rise to the equity.
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> 394. In my judgment, Matthew has established such an equity and the court should not be dissuaded from acting upon it by reference to Daniel's opposition to it."

34. The Judge referred in paragraph 395 of the Judgment to his "long summation above of the '*exceptional circumstances*' of this case" before mentioning "three further factors"

supporting his conclusion. The first of these was "the likely tax consequences for Matthew and Daniel if the assets are sold in the open market", as to which the Judge recorded that there was evidence referring to "potential tax liabilities of £373,500 and £470,000, respectively, if the Farm was to be bought by a third party": see paragraph 396. The second factor related to the position of Gill as 75% shareholder of Cobden Investments Limited, with the Judge referring to difficulties which could arise with the realisation of the dairy herd: see paragraph 397. The third factor concerned "the potential impact of a proposed sale on the farm workers". In that regard, the Judge said in paragraph 398:

> "Mr Townsend said that a sale of a farm typically takes 6 to 9 months. As a matter of [common] sense (and for judicial notice) it is likely that a sale of the farm might well lead to staff retention issues if workers on the Farm consider their longer-term employment is likely to be somewhere else. Staff departures would present a real problem and might well mean the end of the business before the sale was completed. If there is no-one (or not enough persons) to look after the herd it would have to be sold. If the business were to cease there would be no income to service the HSBC loan or for Matthew and Daniel."

Daniel's case

35. Mr James Pearce-Smith, who appeared for Matthew, argued that the equity which the Judge considered to exist had not in fact been established on the facts. Mr Pearce-Smith explained that he was not making a reasons challenge or, at any rate for the most part, disputing the Judge's findings of primary fact. However, Mr Pearce-Smith submitted that the Judge did not address the individual requirements of a proprietary estoppel claim and that, had he done so, he could not properly have found them to be met. Among other things, Mr Pearce-Smith contended that the Judge failed to take the context of the 2005/2006 conversation into account; that the Judge did not consider whether there had come a time when the circumstances had so changed that (a) any understanding derived from the events of 2005/2006 will have become spent, (b) Matthew will not have been relying on what had been said in 2005/2006 and (c) it was no longer reasonable for him to do so; that the Judge ought not to have found detriment when Matthew was deriving benefit from his efforts to advance the partnership through his interest in it; and that the Judge failed to address unconscionability. Mr Pearce-Smith suggested that, where the Judge did not say that he had had regard to a matter, it should be inferred that he did not.

Discussion

36. The first question which arises in this context is: what findings did the Judge make? Whereas the Judge undertook a painstaking analysis of the legal principles and witness evidence in the Judgment, the basis on which he considered there to be a "proprietary estoppel-ish" equity is not so fully spelled out. The Judge discussed the law relating to proprietary estoppel in paragraphs 192-205 of the Judgment but, when he came to the section explaining his "Conclusion on the Exercise of Discretion", he did not address the elements of the estoppel individually or expand on how he considered each of them to have been made out.

37. However, it is evident, I think, that the Judge is to be understood as having found the matters set out in the lengthy passage in quotation marks in paragraph 392 of the Judgment to have been established in the present case. While the passage is framed as a "fifth example" complementing those given in *Bahia v Sidhu*, the opening words of paragraph 392 show that the passage "summarise[s] the basis of [the Judge's] decision on the facts of this case". Further, the Judge said in paragraph 393 that Matthew had "established such an equity" and, in paragraph 395, referred to his "long summation above of the '*exceptional circumstances*' of this case".

38. It follows from this, as it seems to me, that the Judge made, among others, findings to the following effect:

    i) Matthew and Daniel shared an understanding that Matthew would himself carry on the business when the partnership came to an end by being permitted to buy Daniel out at a fair price;

    ii) Matthew devoted himself accordingly to the partnership's business and its development in anticipation of that event;

    iii) Even allowing for the fact that the relationship between Matthew and Daniel arose out of their shared endeavour in making profits and that Matthew benefited equally from any profit during the life of the partnership, Matthew's individual efforts in developing the partnership sufficed to establish detrimental reliance; and

    iv) The understanding and Matthew's reliance on it gave rise to an "equity" in Matthew capable of operating to prevent the liquidation of the partnership's assets if the Court concluded that, in all the circumstances, an order for sale would be unfair and unjust.

39. It is also clear from the Judgment that, taking the matters mentioned in the previous paragraph in conjunction with the others to which the Judge referred, he considered that it would be unfair and unjust to order a sale in the open market.

40. With respect, it would have been better if the Judge had taken the elements of a proprietary estoppel claim in turn and dealt specifically with why he considered each of them to be made out. As I have indicated, however, Daniel is not advancing a reasons challenge. Further, in *Piglowska v Piglowski* [1999] 1 WLR 1360 Lord Hoffmann explained at 1372:

> "The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed …. [R]easons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account."

In the circumstances, I do not think the fact that the Judge did not expressly mention a point justifies the inference that he did not have it in mind.

41. The real question must, as it seems to me, be whether the substance of the Judge's conclusions can be impugned. In that connection, it is to be remembered that the grounds on which this Court will interfere with either a finding of fact or an evaluation are limited. With regard to the former, in *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600, Lord Reed (with whom Lords Kerr, Sumption, Carnwath and Toulson agreed) said at paragraph 67:

> "in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

In a similar vein, in *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 Lewison LJ, with whom Males and Snowden LJJ agreed, explained in paragraph 2 that "[a]n appeal court can … set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable" and that "[t]he mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it".

42. The position is comparable in relation to evaluative assessments. In *In re Sprintroom* [2019] EWCA Civ 932, [2019] 2 BCLC 617, McCombe, Leggatt and Rose LJJ explained in paragraph 76 that, "on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, 'such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion'". See too *R (on the application of R) v Chief Constable of Greater Manchester* [2018] UKSC 47, [2018] 1 WLR 4079, at paragraph 64.

43. An important point in the present case is that the Judge "found [Matthew's] evidence to be honest and reliable on the key points" and said that, "in the light of the testimony given by Matthew on the key points", he was "reassured that what he said … [on] other matters is more than likely to be an accurate account": see paragraphs 213 and 216 of the Judgment. It follows that, when considering whether the Judge's conclusions are open to challenge, it is relevant to have regard to the evidence which Matthew gave.

44. Turning to the elements of proprietary estoppel, the Judge explained in paragraph 350 of the Judgment that the conversation which he found to have taken place in 2005/2006 provided "the basis for Matthew's expectation that, at the end of the Partnership between the two brothers, he would be entitled to buy out Daniel at a fair price". The Judge made findings in respect of that conversation in paragraphs 348 and 349 which I do not understand Daniel to challenge and for which there was anyway support in the evidence. The Judge also made reference, in paragraphs 204 and 222 of the Judgment, to conversations during the life of the partnership about Matthew buying Daniel out and, in paragraphs 224 and 351, to Daniel reacting positively when Matthew asked him in October 2021 whether he would like to be bought out. In

paragraph 352, the Judge said that Matthew's expectation that he would be able to buy Daniel out was not undermined before April 2022 and so continued "throughout almost the entire life" of the partnership. Further, Matthew gave evidence to the effect that there was "at all times" a shared belief that Daniel was not "in for the long haul". Matthew said in a witness statement:

> "It is difficult to describe that by reference to a particular conversation. It simply reflected the way in which matters were dealt with at all times, particularly as the development of the new Dairy was planned and then implemented."

45. Various passages from Matthew's witness statements also support the conclusion that there was detrimental reliance. Thus, Matthew said:

i) "I invested all of my time and any money that I had available to myself into the Partnership. I did so relying on the fact that Daniel had told me that one day the business would be mine and I would need it to prosper to be able to buy Daniel out. I believed that, sooner or later, a day would come when I would be able to buy out Daniel and to farm on my own account. That is why I invested all of my time, and all of my available money, into building the Partnership business";

ii) The business "has been built up from humble beginnings, as a result of my ideas and me driving the business forward. At all times I did this in the belief that there would come a time when I would be buying Daniel out";

iii) "I appreciated all the time that the financial improvement in the business, as a result of my ideas and me driving the business forward, would increase the value of Daniel's share, but it also increased the value of my share which I believed would put me in a position to be able to afford to buy Daniel out";

iv) "One thing on which I am absolutely clear is that I would not have taken the decision in 2013 to undertake the very substantial increase in the Partnership facilities had it not been for the 2005/2006 Conversation"; and

v) "If I wanted to rebuild I would have to find additional money to buy a herd. All of the breeding and genetic improvements that I have worked hard on will be lost. That alone could take up to 20 years to correct. I would have to find new staff and train them. The skilled staff and management would be hard to find. I would have to purchase machinery which most certainly will be much more expensive than the machinery that would have been sold. I would have to go a long period without any income while crops are growing to feed cows as a result of existing fodder being sold as well. There will be other costs in essentially what would be starting from scratch".

46. As for unconscionability, it can be seen from the Judgment that the Judge considered that an order for sale would be "unfair and unjust" by reason of the "equity" derived from the understanding and reliance and that the "three further factors" which he identified in paragraphs 396 to 398 (viz. tax, effect on Gill and impact on the farm workers) supported that conclusion. If the Judge was justified in the findings he made

as regards the understanding and detrimental reliance, it seems to me that he was amply entitled to take the view he did of what would be "unfair".

47. In my view, therefore:

i) The Judge can be seen to have found that there was a shared understanding between Matthew and Daniel, stemming from the 2005/2006 conversation and enduring through to April 2022, that Matthew would be able to buy Daniel out at a fair price when the partnership came to an end;

ii) The Judge can also be seen to have found that Matthew relied on that understanding to his detriment and that, in the circumstances, an order for sale would be "unfair and unjust" or, to use a synonym, "unconscionable";

iii) Those conclusions were not "rationally insupportable" but, to the contrary, had a sufficient basis in the evidence; and

iv) The fact that the Judge may not have mentioned a point does not warrant the inference that he overlooked it.

48. In short, it appears to me that the Judge was entitled to find that the "proprietary estoppel-ish" equity had arisen and that, as a result, it would be "unfair and unjust" to order sale.

Expert valuation

49. One of the reasons which Mr Pearce-Smith gave for the *Syers* order being wrong was that, whatever Mr Townsend's qualities as a valuer, it was realistically possible that, if sold on the open market, it would sell for more than his valuation.

50. However, the Judge explained as follows in paragraph 408 of the Judgment:

> "I am satisfied that the valuation evidence in this case does provide a reliable indication of market value of the Partnership's assets and that the making a *Syers* order in reliance upon it does not involve an unwarranted gamble with Daniel's prospects under the usual form of winding up. Recognition of (a) Matthew's willingness to add the 5% margin of tolerance to the valuation figure (b) the significant saving in the costs of sale provides further reassurance in this respect."

51. In the circumstances, the Judge was entitled to consider that the possibility that, in the event, the farm might sell for more than Mr Townsend anticipated should not deter him from making a *Syers* order. Were such a possibility an absolute bar to a *Syers* order, it is hard to see how such an order, which inherently involves sale on the basis of a valuation, could ever be made. Yet *Bahia v Sidhu* confirms that there are situations in which a *Syers* order can be appropriate.

Conclusion

52. I would dismiss the appeal.

Lord Justice Nugee:

53. I agree with the judgment of Newey LJ, and also that of Lewison LJ below.

Lord Justice Lewison:

54. In *Bahia* the trial judge considered two proposals for realising the partnership assets: sale by auction and a *Syers* order. As Andrews LJ said at [52] he found that both proposals were workable and it would not be unfair to order either of them. He decided, therefore, that he could choose between them. That was his legal error.

55. The starting point is that on the dissolution of a partnership each partner is in principle entitled to have the partnership assets sold. A sale on the open market is the normal manner of sale. But *Bahia* recognises that there is no absolute rule to that effect: see [26]. At [28] Andrews LJ said that "there may be cases in which an open market sale would not be the best means of achieving full value, *or would be unfair*". (Emphasis added)

56. Having set out examples of cases in which a *Syers* order was either made or envisaged, she said at [45] that they were cases "in which a sale by auction *would not serve the interests of justice*. It would not maximise the value of the assets or, even if it would, it would unduly favour one of the parties or *unduly disadvantage the other(s)*". (Emphasis added). She added at [46]:

> "On the other hand, there is no reported authority in which the discretion recognised in *Syers v Syers* has been exercised, or even recognised as arising, in the normal situation where the assets can be sold in the open market *without creating any unfairness*, and the partners are unable to agree on an alternative." (Emphasis added)

57. In my view the take home message from *Bahia* is that a *Syers* order may be made where it is necessary to do so in order to avoid unfairness or injustice.

58. What, then, would count as unfairness or injustice? The animating principle of all kinds of estoppel is the prevention of the unconscionable repudiation of promises or assurances. As it is put in *Spencer Bower on Reliance-Based Estoppel*, 5th ed (2017) at para 1.8:

> "We therefore espouse 'the view that a single purpose underlies all forms of [reliance-based] estoppel on the basis that all aspects of the rules developed are examples of general principle applied so as to prevent [B] from refusing to recognise, or seeking unjustly to deny or avoid, an assumption or belief which he has induced, permitted or encouraged in [A] and on the basis of which [A] has acted or regulated his affairs', submitting that these doctrines are applications of a rule of law which operates if B is responsible for A so acting on the basis of a proposition that A will suffer if B denies it."

59. That is borne out by Lord Briggs' exposition of the principles in *Guest v Guest*. At [13] he said:

> "The true purpose [of proprietary estoppel], as recognised by the Court of Appeal in the present case, is dealing with the unconscionability constituted by the promisor repudiating his promise … In this context justice means remedying the unconscionability identified in the promisor's repudiation of his promise."

60. He continued at [61]:

> "For over a century, starting in the 1860s, the courts of equity developed an equitable estoppel-based remedy, the aim of which was to prevent the unconscionable repudiation of promises or assurances about property (usually land) upon which the promisee had relied to his detriment. The normal and natural remedy was to hold the promisor to his promise, because that was the simplest way to prevent the unconscionability inherent in repudiating it, but it was always discretionary, and liable to be tempered by circumstances which might make strict enforcement of the promise unjust, either between the parties or because of its effect on third parties. While reliant detriment was a necessary condition for the equity to arise, the court's focus on holding the promisor to his promise was not aimed at 'protecting' the promisee from the detriment, still less compensating for it. It was aimed at preventing or remedying the unconscionability of the actual or threatened conduct of the promisor, with the effect, but not the aim, that it tended to satisfy the expectations of the promise."

61. I consider, therefore, that if a judge finds the constituent elements necessary for an estoppel to arise have been proven on the facts, that would justify the making of a *Syers* order.

62. The judge's primary findings of fact on detrimental reliance are sparse. But as Newey LJ has explained, this was not a challenge to the lack of reasons given for the judge's decision.

63. In *D J & C Withers (Farms) Ltd v Ambic Equipment Ltd* (reported together with *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, [2002] 1 WLR 2409) this court said at [89]:

> "There were shortcomings in the judgment in this case. On a number of occasions we have had to consider the underlying material to which the judge referred in order to understand his reasoning. …At the end of the exercise, however, we have been able to identify reasons for the judge's conclusions which cogently justify his decision. While he did not express all of these with clarity in his judgment, he made sufficient reference to the evidence that had weighed with him to enable us, after

> considering that evidence, to follow that reasoning with confidence."

64. We have done likewise in the way that Newey LJ has explained.

65. I therefore also agree that, for the reasons given by Newey LJ, the appeal should be dismissed.