Neutral Citation Number: [2024] EWHC 779 (Ch)

Case No: PT-2023-BRS-000004

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 10 April 2024

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

(1) ANGELA MARY HEYES	**Claimants/**
(2) NEIL HEYES	**Respondents**
- and -	
SARAH HOLT	**Defendant/**
	Applicant

- -
- -

Alexander Learmonth KC (instructed by **Coodes LLP**) for the **Applicant**
Alex Troup KC (instructed by **Direct Access**) for the **Respondents**

Hearing dates: 18 March 2024

- -

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 revised version as handed down may be treated as authentic.

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This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 am on 10 April 2024.

HHJ Paul Matthews :

Introduction

1. This is my judgment on an application by the defendant by notice dated 21 February 2024 for reverse summary judgment against the claimants. The claim is one based on the doctrine of proprietary estoppel, and was commenced by claim form issued on 5 January 2023, accompanied by particulars of claim of the same date. The claim is against the defendant both personally and as executrix of the late Patrick Holt ("Mr Holt"), the defendant's husband, who died on 22 March 2020. The defendant and her late husband had two children, Angela and Jennifer. The defendant also had a son, Justin, by a former marriage. Angela is the first claimant, and the second claimant is her husband, Neil. They have two children, Lily and Charlie. Jennifer and Justin also have families, though for present purposes it is unnecessary to go into details. For ease of reference, I will refer to non-parties apart from the late Mr Holt by their given names, but intending no disrespect thereby.

2. The claim itself relates to two properties. The first is Belmont Farm, near Devoran, Truro in Cornwall. This consists of a farmhouse, garden, cottage, outbuildings and some 22 acres of agricultural land. The second is land at Tregoose Farm, also near Truro, which amounts to about 38 acres, including 10 acres forming one field, known as Dog Park. The second property is to the east of the first, and is separated from it by a watercourse. Mr Holt farmed both properties before his death. The defendant inherited Belmont Farm from her late husband by virtue of his (unchallenged) will, dated 7 March 2019. This property was purchased by Mr Holt from his own mother in 1982, although it had been in his family for some generations before. The land at Tregoose Farm was originally purchased by Mr Holt and his brother in 1973, but the brother's share was bought out in 1985, and at Mr Holt's death it was jointly owned at law by him and the defendant. If this matter goes to trial there may be an issue between the parties as to whether the then beneficial ownership of this land was as joint tenants or as tenants in common, but nothing turns on that for present purposes.

3. The claimants' case is that Mr Holt wished the farm to continue to be farmed by his descendants (see the particulars of claim, at [9]), and the defendant accepts that she and Mr Holt hoped that the farm would remain in the family (see her witness statement, at [26]). But it is also common ground that Mr Holt and the defendant wished to be fair as between their three children. In 2016 or 2017 transfers were executed to give a field to each of the first claimant and her sister Jennifer. (In fact, these transfers were never registered at the Land Registry, and so take effect in equity only.) The claimants plead (in the particulars of claim at [23.14] and [24]) that Mr Holt stated his intention to give a property on the farm called "the Cottage" to Jennifer. They also plead (at [23.13]) that in September 2019 he expressed the intention to split the Dog Park between the three children pending a sale for development. The experts have not yet produced a valuation of the farm, but the first claimant's desktop valuation is £7.45 million. This includes £200,000 for the Cottage, and £5 million for the Dog Park, bearing in mind its development potential. The farm without Jennifer's cottage and the Dog Park would on this basis be worth £2.25 million. (It compares with the probate value of Mr Holt's estate, which was £1.87 million net, although of course only half of the value of the Tregoose land was attributable to Mr Holt's estate, and he owned assets other than the farm.)

4. The proceedings are between a daughter and her husband on the one side, and her mother and her father's estate, supported by the daughter's two siblings, on the other. It is a tragedy for all concerned. This is not only because it splits a family, pitting a parent and two children against another child in a dispute about family property, like a modern-day *King Lear*. It is also because the costs budgeted for are significant in proportion to the value of the property concerned. The approved costs budget for the claimants is £442,015.85, and that for the defendant is £331,230. Together, they amount to £773,245.85, plus applicable VAT of perhaps £154.649.17, making a total of £927,895.02. Of course, in deciding whether to order summary judgment, the court will not be influenced by the cost or length of a full-scale trial: see for example *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1, [264]; *Duchess of Sussex v Associated Newspapers Ltd* [2021] EWHC 273 (Ch), [15].

This application

5. The application for summary judgment itself was made by paragraph 1 of box 3 of the notice dated 21 February 2024. It is supported by the witness statement of the defendant dated the same date. It is opposed by the witness statement of the first claimant, dated 11 March 2024. This is slightly late, but sensibly no point is taken on that. The first claimant has also made a second witness statement, dated 15 March 2024, dealing with the claimants' financial resources. I will come back to all of these. The wording of paragraph 1 of the notice is in conventional terms, tracking the wording of the relevant rule, CPR rule 24.3 (which is set out below).

6. In addition to paragraph 1 of box 3 of the notice, the applicant seeks the following further or alternative relief:

> "2. Alternatively, if the Court permits the claim to proceed at all, a conditional order pursuant to para 5 of Practice Direction 24, requiring the Claimants to pay an appropriate sum of money into court within a short period in default of which the claim be dismissed.
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> 3. Injunctive relief is [sic] against the Claimants; final in the event that the application in paragraph 1 above succeeds, or interim pending in the event it fails. The Defendant seeks an order that:
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> > (a) An order restraining the Claimants from keeping or allowing any of their pigs, horses or other livestock on the Defendant's property at the Farm.
> >
> > (b) An order restraining the Claimants themselves, their servants or agents from entering the Defendant's land without her prior written permission.
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> 4. In the event that the application in paragraph 1 is unsuccessful, then directions are sought pursuant to para 10 of PD 24 and generally and in particular directions:
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> > (a) As to extended dates for service of witness statements;
> >
> > (b) As to instruction of expert evidence and extended dates for the same;

> (c) that the Claimants provide disclosure of further documents, in particular the full audio recordings which they have either not disclosed at all, or of which they have so far disclosed only extracts.
>
> 5. Costs."

(I should just add that, since 1 October 2023, the Practice Direction to Part 24 has been revoked. This means that the references to it in the notice are strictly inaccurate. But I do not think that anything turns on that.)

7. There are a number of unusual features to this application for summary judgment. One is that statements of case are already complete. The defendant filed a defence (but, despite complaining of trespass by the claimants on her land, no counterclaim) on 6 March 2023, and a reply was filed by the claimants on 28 April 2023. This means that the issues between the parties can be clearly identified, which is not usually the case. Another is that directions to trial have already been given, by DJ Taylor on 27 July 2023, as varied by a consent order dated 2 February 2024. As a result, disclosure has already taken place in this claim. This in turn means that the usual speculation as to what might be revealed on disclosure is of less importance to the summary judgment application than would otherwise be the case.

8. Another unusual feature is that the claimants made a number of sound recordings of conversations between themselves on the one hand and the defendant and her late husband on the other. These deal with the subject matter of the claim, and in particular with the assurances which are said by the claimants to have been made to them. The defendant says that most of these recordings were made surreptitiously, without her or her husband's knowledge. But she also says that they demonstrate that no such assurances as are pleaded were in fact given.

Law

Summary judgment

9. The court's jurisdiction to give summary judgment (either against the defendant in favour of the claimant, or vice versa) arises under CPR rule 24.3, which since October 2023 relevantly provides:

> "The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
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> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
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> (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

In this connection, it is well established that, on an application for summary judgment, the burden of proof rests on the applicant: *ED&F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472, [9]. That is so, even though at the trial of the claim the burden would rest on the respondents as claimants.

10. So far as concerns summary judgment, I was referred to the well-known decision of Lewison J (as he then was) in *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch)) 16. In that case, the judge said:

> "15. As Ms Anderson QC rightly reminded me, the court must be careful before giving summary judgment on a claim. The correct approach on applications by defendants is, in my judgment, as follows:
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> i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success: *Swain v Hillman* [2001] 1 All ER 91;
>
> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]
>
> iii) In reaching its conclusion the court must not conduct a 'mini-trial': *Swain v Hillman*
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]
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> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
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> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;
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> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the

> court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725."

11. In *Elite Property Holdings Ltd v Barclays Bank plc* [2019] EWCA Civ 204, a case where permission to amend a statement of case was in issue, Asplin LJ (with whom Hamblen LJ and Nugee J agreed) said:

> "41. For the amendments to be allowed the Appellants need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction … A claim does not have such a prospect where (a) it is possible to say with confidence that the factual basis for the claim is fanciful because it is entirely without substance; (b) the claimant does not have material to support at least a *prima facie* case that the allegations are correct; and/or (c) the claim has pleaded insufficient facts in support of their case to entitle the Court to draw the necessary inferences …
>
> 42. The court is entitled to reject a version of the facts which is implausible, self-contradictory or not supported by the contemporaneous documents and it is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action relied upon."

Although that was said of the phrase "real prospect of success" in the context of an application for permission to amend a statement of case, I consider that, making allowance for the different context, the same applies to the same phrase in the context of an application for summary judgment.

12. This is borne out by the later decision in *King v Stiefel* [2021] EWHC 1045, where Cockerill J said:

> "21. … in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that – even bearing well in mind all of those points – it would be contrary to principle for a case to proceed to trial."

13. Complex claims, cases relying on complex inferences of fact, and cases with issues involving mixed questions of law and fact where the law is complex are likely to be inappropriate for summary judgment: see *Three Rivers District Council v Bank of England (No. 3)* [2003] 2 AC 1 (HL) at [95] *per* Lord Hope. Moreover, a trial 'can often produce unexpected insights' and 'a judge will often find that his first impression of a case, when reading into it, is not the same as his final conclusion': see

Playboy Club London Ltd v Banca Nazionale del Lavoro SpA [2019] EWHC 303 (Comm) at [26].

14. And, in relation to the possibility of future disclosure, as Lord Hamblen said in *Okpabi v Royal Dutch Shell plc* [2021] 1 WLR 1294, SC, the relevant question to ask was

> "128. … are there reasonable grounds for believing that disclosure may materially add to or alter the evidence relevant to whether the claim has a real prospect of success?"

15. Turning to questions of law, in *Altimo Holdings and Investment Ltd v Kyrgyz Mobil Tel Ltd* [2012] 1 WLR 1804, PC, Lord Collins said:

> "84. The general rule is that it is not normally appropriate in a summary procedure (such as an application to strike out or for summary judgment) to decide a controversial question of law in a developing area, particularly because it is desirable that the facts should be found so that any further development of the law should be on the basis of actual and not hypothetical facts: e.g. *Lonrho Plc v. Fayed* [1992] 1 A.C. 448, 469 (approving *Dyson v Att-Gen* [1911] 1 KB 410, 414: summary procedure 'ought not to be applied to an action involving serious investigation of ancient law and questions of general importance ...'); *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 at 741 ('Where the law is not settled but is in a state of development … it is normally inappropriate to decide novel questions on hypothetical facts'); *Barrett v Enfield London BC* [2001] 2 AC 550, 557 (strike out cases); *Home and Overseas Insurance Co. Ltd. v Mentor Insurance Co. (U.K.) Ltd.* [1990] 1 WLR 153 (summary judgment). In the context of interlocutory injunctions, in the famous case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, 407 it was held that the court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried. It was no part of the court's function 'to decide difficult questions of law which call for detailed argument and mature consideration'."

Proprietary estoppel

16. The law in relation to proprietary estoppel was not much disputed between the parties. This doctrine has little to do with the well-known doctrine of estoppel by representation of *fact*: see *eg Freeman v Cooke* (1848) 2 Exch 654, 154 ER 652. This is because it is not concerned with the *present* state of things. Instead, it is concerned with how things will be *in the future*. Moreover, it is about *promises*, and not merely about statements of present intention: *Thorner v Major* [2009] 1 WLR 776, [2], per Lord Hoffmann; *James v James* [2018] EWHC 43 (Ch), [38]. Some cases about the future are cases of *acquiescence*, or standing-by, by the landowner, whilst the other party, *mistakenly* thinking that a promise or assurance has been given, acts in detrimental reliance on the supposed promise or assurance. This is a different kind of proprietary estoppel, and has slightly different rules. But this case is not of that kind. It is the case of an alleged promise or assurance.

17. Returning to cases such as the present, therefore, there must be a promise or assurance (and not merely a statement of present intention) by a property owner, whether by words or conduct, and whether on one occasion or more, or indeed over a period of

time, apparently intended to be relied upon, made to another person who relies on such promise or assurance to his or her detriment, such that it would be unconscionable for the property owner to renege on the promise or assurance. This is a doctrine in which (in this respect like estoppel by representation) the law looks at the effect on a reasonable person in the position of the recipient of the relevant words or conduct, rather than at the subjective intention of the property owner: see *Thorner v Major* [2009] 1 WLR 776, [2]-[5], [17], [26]-[27], [60]. It is accordingly neither wholly subjective nor wholly objective.

18. The promise or assurance must be "sufficiently" clear, rather than ambiguous, and "must relate to identified property". As to the first point, in *Thorner v Major* [2009] 1 WLR 776, Lord Walker (with whom Lords Scott, Rodger and Neuberger agreed) said:

> "56. I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context. I respectfully concur in the way Hoffmann LJ put it in *Walton v Walton* … Hoffmann LJ stated at para 16:
>
> > 'The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made'."

This has been endorsed in subsequent cases, most recently in *Spencer v Spencer's Estate* [2023] EWHC 2050 (Ch), by Rajah J at [26].

19. As to the latter point, in *Thorner v Major* [2009] 1 WLR 776, Lord Walker said:

> "61. In my opinion it is a necessary element of proprietary estoppel that the assurances given to the claimant (expressly or impliedly, or, in standing-by cases, tacitly) should relate to identified property owned (or, perhaps, about to be owned) by the defendant. "

Again, this was endorsed recently by Rajah J in *Spencer* at [27].

Interpretation of words

20. Whilst the interpretation of a written document is a question of law, the interpretation of spoken words (and, I apprehend, conduct), is, for largely historical reasons, a question of fact: see *Carmichael v National Power plc* [1999] 1 WLR 2042, 2048-2049, per Lord Hoffmann; *Thorner v Major* [2009] 1 WLR 776, [58], per Lord Walker, [82], per Lord Neuberger. Where a document falls to be interpreted, as a matter of law, the *context* in which it is to be interpreted is a matter of fact. In *Thorner v Major*, Lord Walker said:

> "58. … The commercial, social or family background against which a document or spoken words have to be interpreted depends on findings of fact. When a judge, sitting alone, hears a case of this sort, his conclusion as to the meaning of spoken words will be inextricably entangled with his factual findings about the surrounding circumstances …"

The statements of case

21. In the particulars of claim in the present case, the claimants have pleaded (in part) as follows:

> "9. On one occasion in the Autumn of 2013, when Angela and Neil were visiting the Farm, Patrick (who was then aged 81) invited them to join him in the drawing room at the farmhouse. There he told them that he wanted them to relocate to live nearby to Belmont Farm so that they could learn the ropes in relation to the farming business and take on the Farm. He assured them that the Farm would be theirs one day and because he wanted it to stay in the family for future generations.
>
> 10. Patrick repeated this request and assurance during the course of further discussions with Angela and Neil. Sarah also participated in those discussions. Patrick made it clear to Angela and Neil that he intended to take a step back from farming in the near future, but that he would be able to provide support and advice in relation to the farming business. He also said that the farming business should be diversified in future and that it was Angela and Neil who could implement that diversification.
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> 11. In July 2014 Angela and Neil, in reliance upon these assurances, moved with their young children from Guildford to Cornwall. While Angela and Neil still had reservations about the move, in particular because of the implications it had for their respective careers and financial plans, Patrick again assured them that it was the right decision as the Farm would be theirs one day.
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> […]
>
> 17. In early 2019 Patrick told Angela and Neil that he was arranging to make a new will in which he would leave the Farm to Sarah in order to mitigate any inheritance tax liability, but again reassured them that the Farm would still become theirs. This was not surprising to Angela or Neil because they knew that Patrick was preoccupied with minimising inheritance tax and that he had taken (and was continuing to take) professional advice in order to achieve this aim.
>
> […]
>
> 22. Angela and Neil moved to Cornwall, and Neil gave up his job and has worked on the Farm since September 2015, on the understanding and expectation, encouraged by Patrick and Sarah, that they would inherit the Farm either before or when Patrick and Sarah died.
>
> 23. From 2013 onwards, many and frequent assurances were made by Patrick and Sarah that Angela and Neil would inherit the Farm. Angela and Neil cannot detail each and every occasion on which the assurances were made; they were sufficiently numerous that the position came to be accepted and taken for granted. In particular, the following assurances were made to Angela and Neil at various times … "

(For the purposes of this application, I can omit the detailed allegations of assurances.)

22. The particulars of claim are supported by a statement of truth from each of the claimants. In the defence, the defendant accepts certain factual aspects of the context, but denies that any such assurances were given. For present purposes, it is not necessary to go into details. The battleground of this application is clear enough.

Evidence

23. As I have said, the application for summary judgment is supported by the witness statement of the defendant dated 21 February 2024. This deposes, in the usual way, to the belief of the defendant that the claimants have no real prospect of succeeding in their claim at trial, for the reasons then given. It is not necessary for me to go into more detail of this at present.

24. In her witness statement dated 11 March 2024, made in opposition to the defendant's application for summary judgment, the claimant says this (in part):

> "5. There had been a longstanding intention on the part of my parents for Neil and I to inherit the Farm. It was talked about for many years. The intention was cemented in a formal conversation which Neil and I had with my father in the drawing room of the farmhouse in 2013. During that conversation my father told us that he wanted us to relocate to live nearby to the Farm so that we could learn the ropes in relation to the farming business and take on the Farm, and he specifically assured us that the Farm would be ours one day and that he wanted it to stay in the family for future generations. After that formal conversation, Neil and I, together with our two young children Lily and Charlie (at the time aged just 4 years and nearly 2 years), abandoned our plans in the Guildford area and arranged to move to Cornwall at the end of July 2014. We bought a house right next to the Farm, and Neil gave up his job and has worked on the Farm since September 2015. I gave up my own job with Accenture in January 2019, and later in 2019 I sought work locally in Cornwall. The promise was repeated verbally by my parents over many years thereafter, not only to us but also to various third parties whom we shall be calling as witnesses. It was referred to in writing through a Letter of Intent signed by both of my parents dated 21 August 2019 and further letter dated 16 February 2020 which expressly referred to our 'inheritance'. Copies of those letters are at pages 110 and 111 of the exhibit to my mother's statement.
>
> […]
>
> 9. My mother is wrong to suggest in paragraph 5 that I tried to 'extract' a promise or agreement from my father. The promises given by my father, and by my mother, were given by them voluntarily. I would not have moved down to Cornwall with my family if I thought that this was not the case. After we made the move there was much discussion around the 'how' but not the 'if'. In other words, we discussed how the promises could be implemented, taking account of tax and the need to make provision for Jenny and Justin, but these discussions were always based upon the fundamental understanding that the Farm (excluding the parts discussed above) would pass to me and Neil. To suggest that I harassed

> or bullied my parents is unfair and wrong. I am known as honest, trustworthy, hard-working and family-focussed person. I am a Girl Guide Leader and a School Governor. I have always sought to support both my mother and my father and look after them, often taking them cups of tea and meals, as indeed they looked after and supported me over the years, which I am are thankful for. We have always looked to ensure my siblings were provided for too, and that things were as fair as possible."

25. The first claimant's second witness statement, dated 15 March 2024, dealing with the claimants' finances, is not relevant to the main application, but only to the question of a conditional order. I can therefore put that on one side for the moment, and return to it so far as necessary.

Submissions

Context

26. The defendant's attack on the claim, and the foundation of this application for summary judgment, is based on the unusual features of the claim by comparison with other proprietary estoppel cases. The context is that, first, this is on any view a small farm which cannot by itself support a family, and the income from which has had to be supplemented by income from other sources. As the defendant's witness statement makes clear (at [21]), from his marriage to his retirement Mr Holt earned his living as a fulltime airline pilot, not as a farmer, and the income from his career enabled the house and farm to be kept going, as he wished. So, it is not like *Guest v Guest* [2022] 3 WLR 911, for example, where less than the whole farm would still be a viable farming unit: see the decision in that case at [83]. Moreover, the Belmont farmhouse is disproportionately large for the land, which means that (unusually for a farm) there will be inheritance tax to pay on each passing from one generation to another. In addition, Mr Holt and the defendant were alive to the possibility of the need for residential care for themselves as they got older. In considering how to be fair to the three children, these things would have had to be factored in from the beginning.

27. Second, this is not the typical case of the promisee who works on the farm for many years at low pay, forgoing the opportunity to make a career elsewhere. There are many cases in the books of that sort, but this is not one of them. Here, the claimants did not work on the farm until later in life. They had non-farming careers elsewhere in England, and the first claimant, as main family breadwinner, did not give up her (well-paid) job until 2019. This is the case of persons who have had another life, but have chosen to give it up.

28. Thirdly, there is considerable documentary (including sound recording) evidence to evidence at least some of the discussions and other communications between the parties on which the claimants rely. This is uncommon in proprietary estoppel cases, at least in those involving farms (and, here in the south-west, a lot of them do). At the same time, it is fair to say that there are no documents dating from the time of the "formal conversation" in 2013. The earliest documents relevant to the alleged assurances appear to date from March 2016. (In saying that, I do not overlook the fact that there are recordings from 2019 in which it is said that the claimants admit certain things in relation to the 2013 meeting. But they are not in themselves contemporaneous.)

Defendant's arguments

29. The focus of the defendant's attack is threefold. First, she says that the assurances pleaded are too uncertain in extent to be the foundation of a proprietary estoppel claim. Second, she says that it is clear from the documentary evidence that any such assurances were neither intended nor apparently intended to be relied upon. Thirdly, she says that it is clear from that evidence that the claimants themselves knew that no sufficiently clear assurances had been given and that they were not intended to be relied upon. In other words, what the claimants did, in reliance (on their case) on the assurances pleaded, was essentially speculative and at their own risk.

30. In her witness statement in support of this application, the defendant sets out, in great detail in paragraphs 38 and 39 (and over some 10 pages of her statement) extracts from correspondence and transcripts of recordings of conversations between the parties. I will not set them out here, but I have read them all. The defendant then summarises all this by saying:

> "40. So, [the first claimant] has time and time again admitted that she always knew she had not been promised the whole farm, and that she *knew* that if she did get the lion's share of the farm, she would have to 'settle up' with her sister and half-brother.
>
> 41. It is for these reasons that I am confident, and I believe the court can be confident, that [the claimants] have no real prospect of succeeding on their claim at trial. There was no promise or assurance, and they knew it. Any discussions there were about the future and whether [the claimants] would be able to take over farming and living at Belmont were always provisional, as to which bits they might inherit, what they might have to pay, either to us or to the other children, as to how successful their farming proved to be, as to what the inheritance tax situation might be, as to whether Patrick and I would need to spend our assets on nursing home fees or anything else, and as to when we might eventually hand over parts of the farm to her. In the absence of an unequivocal assurance from both Patrick and me that they would inherit the whole Farm, or a specified part of it, I understand that a proprietary estoppel cannot succeed."

Discussion

General

31. These are powerful arguments by the defendant. I readily accept that the documents and recordings to which the defendant refers provide support for them. Indeed, it will not be easy at trial for the claimants to surmount them. And the burden at trial lies on them to prove their case. But this is not the trial of the claim, and I am not conducting one. Instead, this is an application by the defendant to bring the claim to an end summarily, *without* a trial, on the basis that the claimants have no real prospect, or only an unreal, illusory or theoretical prospect, of success at trial. And, as I have said, on this application the burden lies on the *defendant*, to prove that this is indeed the case. This is a high threshold: see *eg Sainsbury's Supermarkets Ltd v Condek Holdings Ltd* [2014] BLR 574, [13]. A claimant is not lightly to be deprived of a trial.

Uncertainty in extent

32. The defendant's first point is that the assurances pleaded are too uncertain in extent to be the foundation of a proprietary estoppel claim. The claimants' claim as pleaded is to "the Farm", defined as the whole of the land registered in two titles, that for Belmont Farm and that for the Tregoose land. This is what they say was promised from 2013 onwards. But they nevertheless accept that some parts of what they claim cannot be included. These are (i) the fields given to the first claimant and to Jennifer in 2016 or 2017; (ii) the Cottage, which the defendant and Mr Holt decided was to go to Jennifer; (iii) the field known as Dog Park, which had development potential, and was to go all three children; and (iv) perhaps another field intended for Jennifer. Accordingly, if there was a promise made, its scope has been reduced since it was originally made and the claimants moved to Cornwall. In my judgment, that is not a bar to claiming the whole farm, though it may mean that they succeed only in relation to what remains. "The Farm" is what the farm is at the time the promise comes to be performed: see *Thorner v Major*, [9], [64]-[65], [90]-[91], [95].

33. Another argument might be that Mr Holt and the defendant, if they gave any assurance at all, never made up their minds as to exactly *what* they were promising to give, because they were not then clear how they would divide up their assets between their children. On this view, they would be promising something which could reasonably and recognisably be called "the Farm", but they had not identified what it was. They say that this is supported by the "holding" will which Mr Holt made, leaving everything to the defendant. The claimants' case, on the other hand, is that Mr Holt and the defendant *had* identified the property, but subsequently sought to modify it. The problem is that these are clear factual disputes between the parties. Although, as the extracts set out earlier from *King v Stiefel* and *Elite Property Holdings Ltd v Barclays Bank plc* show, there are some such disputes which can be seen to have no substance worth a trial, in my judgment the factual disputes here are not of that limited character. In particular, whether any assurances (if given) were "clear enough" can only sensibly be determined once all the facts are found, and the context is clear.

Lack of intention

34. The defendant's second point is that it is clear from the documentary evidence that any such assurances were neither intended nor apparently intended to be relied upon. But the witness statement evidence of the claimants is that they *were* intended to be relied upon. The documentary evidence postdates 2013, when the original assurance was said to have been given, and upon which the claimants say that they relied in moving to Cornwall. The resolution of this dispute will require the court to consider *all* the evidence, including in particular the cross-examination of the various witnesses upon their witness statements. At this stage, that is not my role.

The claimants' state of knowledge

35. The defendant's third point is that it is clear from the documentary evidence that the claimants themselves knew that no sufficiently clear assurances had been given and that they were not intended to be relied upon. But the claimants' witness evidence is to the contrary. Again, these factual disputes can be properly resolved only at trial, with the benefit of cross-examination and full argument.

Conclusion

36. On all the material before me, my conclusion on the application for summary judgment is that, although the case is weak, it is not so weak that I can say it has only a fanciful or theoretical prospect of success. Accordingly, I cannot grant summary judgment.

Conditional order?

37. In these circumstances, the defendant asks for a conditional order, in accordance with CPR rule 24.6, which relevantly provides:

> "When the court determines a summary judgment application it may—
>
> …
>
> (c) make its order subject to conditions in accordance with rule 3.1(3)."

Rule 3.1(3) provides:

> "(3) When the court makes an order, it may –
>
> (a) make it subject to conditions, including a condition to pay a sum of money into court; and
>
> (b) specify the consequence of failure to comply with the order or a condition."

38. Here the defendant asks that the order dismissing the application for summary judgment, and thus permitting the matter to go to trial, be made conditional on the claimants' paying a sum of money into court, with the sanction of dismissal of the claim if this is not done within a specified time. The claimants resist this on the basis that the claim is not so weak as to justify such an order, and also on the basis that it would stifle the claim altogether.

39. In *Gama Aviation (UK) Ltd v Taleveras Petroleum Trading DMCC* [2019] EWCA Civ 119, Males LJ (with whom Hamblen LJ and Dame Elizabeth Gloster agreed) said:

> "43. It follows that there is a category of case where the defendant may have a real prospect of success, but where success is nevertheless improbable and a conditional order for the provision of security may be made. This is the typical case where a conditional order may be made requiring the provision of security for the full sum claimed or something approaching that sum."

40. Nevertheless, the court made clear that the caselaw had laid down certain principles to be observed in exercising this jurisdiction:

> "45. First, at any rate in a case where the defendant has a real prospect of successfully defending the claim, the court must not impose a condition requiring payment into court or the provision of security with which it is likely to be impossible for the defendant to comply …
>
> 46. Second, the burden is on the defendant to establish on the balance of probabilities that it would be unable to comply with a condition requiring

> payment into court or the provision of equivalent security …
>
> 47. Third, in order to discharge that burden a defendant must show, not only that it does not itself have the necessary funds, but that no such funds would be made available to it, whether (in the case of a corporate defendant) by its owner or (in any case) by some other closely associated person …
>
> […]
>
> 51. Fourth, and despite the fact that the Rules expressly contemplate the possibility of a payment condition being imposed, it is not incumbent on a defendant to a summary judgment application to adduce evidence about the resources available to it, at any rate in a case where no prior notice has been given that the claimant will be seeking a conditional order …
>
> […]
>
> 54. Fifth, the court's power to make a conditional order on a summary judgment application is not limited to a case where it is improbable that the defence will succeed. Such an order may be appropriate in other circumstances, for example (and without being exhaustive) if there is a history of failures to comply with orders of the court or there is a real doubt whether the party in question is conducting the litigation in good faith. However, the court needs to exercise caution before making a conditional order requiring a defendant who may have a good defence to provide security for all or most of the sum claimed as a condition of being allowed to defend … ”

41. The statements above are framed on the basis that the conditional order is sought by the claimant against the defendant. However, *mutatis mutandis*, they apply equally where such an order is sought by the defendant against the claimant on a reverse summary judgment application (as here). As I have already said, I consider (i) that the claim has a “real prospect” of success, in the sense that that prospect is not fanciful, but also (ii) that it is, on the materials I have seen, weak and unlikely to succeed. In my judgment, this case falls within the class of case identified by Males LJ in *Gama Aviation* where a conditional order may be made. The more difficult question is whether to do so would stifle the claim. I bear in mind in particular the first three of the five principles set out in the judgment of Males LJ in *Gama Aviation*, [42].

42. One paragraph in the first claimant’s first witness statement, and the whole of her second witness statement, address the claimants’ financial position. According to this, the claimants have little cash at bank, and are in the process of remortgaging their house in Devoran (for £311,000) in order to pay counsel’s and other fees for the remainder of the case (having ceased to instruct their solicitors in order to reduce expense). The second claimant owns a tenanted and mortgaged house in Bury, said to have equity of about £151,000 remaining. Other assets (including two ponies, a horsebox, a car, and some inherited investments) are much smaller in value, and the largest (an ISA worth about £33,000) is earmarked to pay a capital gains tax bill arising on the sale of the claimants’ Guildford property and also a credit card bill.

43. The first claimant goes on to complain of having had to leave her job as a result of “the upset caused by this case”, and of being unable to work for 18 months because of

anxiety and depression. She has been employed again (albeit, in her words, "at a reduced salary of £75,000 per annum") since November 2023. She also complains that, by seeking to restrict their access to the farm, the defendant has caused them to lose income from a Yurt at the farm and also from a livery business. There are a few documents exhibited to the witness statement, but there is very far from a complete picture.

44. The defendant criticises this evidence. She says there is no documentary evidence to support the assertion that the claimants cannot afford to pay money into court. She also says that land registry records show that there is no further mortgage on the Devoran house, and no pending application has been lodged. Finally, she says there is no explanation why no other form of security can be offered.

45. In my judgment, the first claimant's evidence is thin. There is, for example, no evidence of the current value of the Devoran property. Plainly it must be worth significantly more than £311,000, as that is what Barclays Bank plc is being asked to advance. But how much more? The mortgage application appears to have been prepared on the assumption that it was worth £650,000. There is no documentary support for the value of the Bury property as £249,000, beyond a mention in the mortgage account statement that the house price index valuation was £349,223.60. Next, I do not understand why the first claimant, as a beneficiary, does not know the value, even approximate, of her interest under the will of Mr Holt. She does not even mention, let alone exhibit, requests to her mother or other executor or trustee to inform her of this. Nor does she explain what the Guildford property was sold for, what the surplus was after repaying any mortgage and other costs, and what the surplus was spent on (if that be the case). Lastly, the claimants have made no attempt to show that no other resources are available to them, for example from the second claimant's family (which is not mentioned).

46. As Males LJ made clear in *Gama Aviation*, the burden lies on the respondent to an application for a conditional order "to establish on the balance of probabilities that it would be unable to comply with a condition requiring payment into court or the provision of equivalent security". In the present case the claimants were aware at least from the service of the defendant's witness statement of 12 February 2024 that, if the summary judgment application did not succeed, a conditional order would be sought. The first claimant then responded to this, albeit briefly, in her witness statement of 11 March, and then produced a second witness statement (dated 14 March 2024) expressly dealing with this suggestion. The claimants cannot say they were taken by surprise, and have had no chance to deal with it.

47. On the materials before me, I conclude that the claimants have not satisfied me on the balance of probabilities that they could not comply with a payment or security condition. On the contrary, I am satisfied that the claimants could provide at least some security, and without selling any assets. I bear in mind that the claimants might establish an equity in the estate of Mr Holt and against the defendant falling short of the entire farm. That claim is an asset of the claimants. Subject to the rules of champerty, it can be used as security. The first claimant, on her evidence, also has an interest under trusts created by Mr Holt, whether *inter vivos* or on death (it is not clear which from the evidence). She could therefore grant a charge over all her interest in the estate of her late father and any trusts created by him. The second claimant could grant a (second) charge over the Bury property. And the claimants together could

grant a further charge over the Devoran property (ranking behind any to Barclays Bank to secure the refinancing for legal fees).

48. All of these charges can be granted to the defendant to secure the payment of any costs award made against them, or either of them, in her favour in this litigation. (In the case of the claim, that would be unusual, because the chargee would also be the judgment debtor. But it is possible: *Re BCCI Ltd (No 8)* [1998] AC 214. The defendant may obviously dispense with that if she wishes.) These charges will enable the claimants to secure the refinancing which they seek, to pursue this litigation, and to continue to use all their assets in the meantime, as well as preserving the children's ponies and bank accounts, but at the same time giving at least some security to the defendant. If the claimants succeed in their claim, as no doubt they think they will, then, in accordance with the usual costs rules, then, subject to CPR Part 36, it is not likely that there will be any significant costs order made against them in favour of the defendant. (However, I make clear that the security will be good in relation to any that there may be. The claimants must take their own advice on this.)

49. I will order that these charges (legal in respect of those assets in which the claimants have a legal estate or interest, and otherwise equitable) be executed by 4 pm on the day four weeks from the hand-down of this judgment. In default of any one or more of these charges being executed by that time, the claim will be struck out. If there is any dispute about the wording of the charges, I will decide the matter on paper. I will however give the claimants the alternative of paying £331,230 into court by the same time and date, in case this course should be or become open to them, and be preferred by them.

Alternative dispute resolution

50. All that does not mean that this case must inevitably go to trial. This is a case which cries out for mediation by the parties. I am aware that mediation has already been attempted between the parties (in November 2022), and on that occasion it failed. I commend them nevertheless for trying. But that was before the claim had even been issued. Now that the parties have full pleadings and disclosure, as well as (for what it may be worth) this judgment, the parties should try again. I will order a stay for that purpose. In entering such a mediation, the claimants would now be aware that, on the materials that I have so far seen and heard, their case is weak, and the costs of the whole trial would, on the claimants' own evidence, ruin them if they lost. I can also see considerable scope for cross-examination of the claimants on their evidence at trial. In a case where summary judgment has been sought, but not obtained, there is always a (real) risk at trial for the party or parties that survived the application. On her side, the defendant would be aware of the difference between, on the one hand, simply looking at documents presented to the court on their own, and, on the other, hearing and seeing witnesses and cross-examination at trial. She would also take full account of litigation risk. In litigation, whatever the lawyers say, nothing is certain.

Interim injunction?

51. On the basis that the claim continues, the defendant seeks an interim injunction against the claimants restraining them from committing acts of trespass by themselves and by their animals (see paragraph 3 of box 3 of the application notice, set out above, at [6]). The defendant accepts that she has not pleaded a claim for trespass by way of

counterclaim, and that, as things stand, she cannot obtain a permanent injunction in these proceedings. But she says in her evidence (witness statement, [46]) that she has asked the claimants not to come on the land without her consent, and to remove the two ponies and one pig that they still have there, but to no avail. She further says that, if she succeeds in defending the claim, the land will remain hers, and she will be entitled to an injunction "as a matter of right". Even if the claim succeeds, and the claimants obtain what they say they were promised, that would not give them a right to possession of the land until the defendant's death, if ever.

52. The first claimant's evidence in answer to the application does not challenge the allegations of trespass put forward by the defendant. Indeed, she says (at [64]) that, even so, the claimants hardly ever see the defendant. She says that being at the farm is a significant part of the claimants' children's lives, and

> "For us to prevent that happening, and to move the ponies would have a huge further detrimental impact upon them."

She concludes that it would not make sense for the claimants to remove themselves and their belongings from the farm before the court has decided the case.

53. The claimants say that, in relation to any application for an interim injunction, the relevant test would be that in the well-known case of *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, HL. They say that the balance of convenience under that test would favour them, as the only harm identified by the defendant is "the upset she feels when seeing [the claimants] on the farm, but in reality [they] hardly see her", They further say that any such harm "is outweighed by the very real detriment which [the claimants] would suffer if they had to remove their belongings (including their office, their belongings in the stables, tractor parts and parts of the Yurt) and their ponies … " They say that if there is any doubt the court should preserve the status quo.

54. The test in *American Cyanamid Co v Ethicon Ltd* for the grant of an interim injunction has three stages:

> (1) Is there a serious issue to be tried between the parties?
>
> (2) If so, would damages be an adequate remedy for a party injured by the court's grant of, or its failure to grant, an injunction?
>
> (3) If not, where does the "balance of convenience" lie?

55. The first stage of the *American Cyanamid* test requires the court to consider whether there a serious issue to be tried between the parties. At the moment there is on the statements of case no issue at all between the parties *as to trespass* on the farm by the claimants. The issue between the parties is instead as to whether the claimants have an equity by way of proprietary estoppel which may be satisfied by the grant of some interest in the land (or in some other way). Possible trespass by the claimants on the land in the meantime is no part of this.

56. However, CPR rule 25.1(4) provides that:

> "The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind."

In the light of that rule, it seems to me that the court cannot refuse to grant an interim injunction to restrain an alleged trespass pending trial simply on the grounds that there is no claim to a final injunction to restrain the trespass permanently. In that case, the first stage test of "serious issue to be tried" cannot here be referred to the claim that is actually being advanced, for proprietary estoppel, here for the simple reason that it is not the claimants who seek the injunction but the defendant. And she is not making the claim. Instead, it has surely to be referred to the claim in trespass which the defendant could make, but has not made.

57. On the facts of this case, I think that the answer to the problem is to be found partly in rule 25.1(4), but partly also in the decision of the Court of Appeal in *Patel v WH Smith (Eziot) Ltd* [1987] 1 WLR 853. There, the plaintiff brought a claim for an injunction to restrain an alleged trespass on his land by the defendants, as well as damages, and moved for an interim inunction pending trial. The judge refused the interim injunction on the basis that, although he considered that there was a serious issue to be tried, damages would be inadequate for the defendants if they won, and the balance of convenience was against the grant of the interim injunction. The plaintiff appealed this refusal to the Court of Appeal. That court overturned the judge's decision and imposed the injunction sought.

58. Balcombe LJ said (at 861C-D):

> "In my judgment the evidence shows no arguable case for the defendants having a general right to park cars in the yard beyond such right as they may be entitled to as part of their right of way. In my judgment, therefore, the judge below was wrong when he found that there was a defence to be reckoned with and that there was a serious issue to be tried. If there is no arguable case, as I believe there is not, then questions of balance of convenience, status quo and damages being an adequate remedy do not arise. Prime facie the plaintiffs are entitled to an injunction to restrain trespass on their land."

59. Neill LJ said (at 863A-B):

> "I, too, have come to the conclusion that the judge was in error in holding that there was a defence to be reckoned with and a serious issue to be tried. In my opinion no defence has been put forward sufficient to show that there is any relevant issue to be tried. Accordingly, considerations such as the balance of convenience and the maintenance of the status quo (which would have been very important if the evidence had been sufficient to establish a triable issue) do not come into the picture."

60. May LJ agreed with both judgments. Scott J (as he then was) came to a similar conclusion in *Official Custodian for Charities v Mackey* [1985] Ch. 168, 187D-E.

61. In the present case the claimants themselves have pleaded in their particulars of claim (at [2]) that the defendant "became the sole owner of the Farm upon the death of" Patrick Holt, her husband. That pleading is of course admitted by the defendant in her defence. There is thus no issue there at all. The defendant is the legal owner of the

land. The claimants however claim to be entitled *in equity* to the farm by way of proprietary estoppel (particulars at [3]), and the prayer for relief seeks a declaration that they

> "are beneficially entitled to the whole of the interest of the Defendant in the Farm … alternatively such lesser share of the beneficial interest as the court thinks fit".

That claim is denied in the defence. But the particulars make clear that the promise or assurance alleged, on which the claim to an equity is founded, was one that the claimants would inherit the farm on the death of the survivor of Mr Holt and the defendant.

62. Thus, in substance, their claim is to a *future* interest in the farm, rather than an *immediate* interest. And any such interest would be an interest in equity, not at law. That is significant because, in *Brake v The Chedington Court Estate Ltd* [2022] EWCA Civ 1302, the Court of Appeal held that a person with even an absolute, but merely *equitable*, interest in the land acted unlawfully in exercising a self-help remedy to take possession of the land as against the trustees in possession. Such a person being out of possession could not therefore maintain a common law action of trespass against the trustees. So too here.

63. In these circumstances, I hold that there is no serious issue to be tried on the question whether the defendant is entitled to possession sufficient to maintain a claim of trespass against the claimants. That being so, the questions of the adequacy of damages and the balance of convenience are irrelevant. The evidence amply satisfies me that the claimants are trespassing on the land, and unless restrained will continue to do so. In my judgment, it is both just and convenient to restrain that trespass. Accordingly, an interim injunction should be granted in the terms sought by the defendant. During the hearing, the defendant agreed to give the usual cross-undertaking in damages. But I have concluded that, since there is no serious issue to be tried, and the claimants do not challenge the defendant's title, this is not necessary.

64. I may just say that, if I were wrong about bypassing the second and third stages of the *American Cyanamid* test, I should have held that damages *would* be an adequate remedy for the claimants, but *not* for the defendant, and I would have granted the injunction on that basis. An elderly landowner who does not want trespassers (with whom she has fallen out) on her land cannot be compensated in money for the hurt she feels. On the other hand, the inconvenience and expense for the claimants of having to move their animals elsewhere is readily compensable in money. And the exclusion of the claimants and their children from the property until trial in the present circumstances will not in my judgment cause them any loss which the law should recognise as worth protecting except by money compensation.

Further directions

65. I am asked by both sides to give further directions for trial. So far as disclosure by the defendant is concerned, the draft direction at paragraph 2 of the claimants' draft order seems apposite for the purpose, with the substitution of "15 April" for "5 April", and the omission of the words "possession or", since for disclosure purposes the concept of possession is part of the concept of control. I deal with the defendant's application for disclosure by the claimants below. As for the stay for mediation, I am content with

the draft direction at paragraph 3 of the claimants' draft order. I am also happy with the direction relating to the instruction of the single joint expert at paragraph 4 of the claimants' draft order. I am not sure I understand the reference in paragraph 49 of the defendant's skeleton argument to a dispute about indicating to the expert which items the defendant disputes. But if there are factual disputes as to ownership of items which can only be resolved at trial, these will have to be valued separately, and for that purpose those items must be indicated to the expert. I am also happy with the draft direction at paragraph 5 of the claimants' draft order, dealing with exchange of witness statements, and for the avoidance of any doubt paragraph 6 should also be included.

66. The defendant also asks for an order for further disclosure in relation to the sound recordings made by the claimants of conversations with the defendant and Mr Holt. In her witness statement she says:

> "37. I should also say that I do not believe that [the claimants] have yet disclosed all of the recordings they made, or that all of the recordings they have disclosed are complete. Although we can be quite sure that they have disclosed all the recordings and parts of recordings which are best for their case, if this matter is to continue, I will require full disclosure of all the recordings which [the first claimant] secretly made."

67. In answer to this, the first claimant in her witness statement says (at [35]) that the claimants "have disclosed all recordings and all transcripts in our possession." This, however, is only a partial, and not a complete, answer to the defendant's application. The test for disclosure is not "possession" but "control", which is wider than "possession". So, the claimants could, consistently with the first claimant's statement, have some recordings or transcripts in their *control* but yet not in their *possession*, which they have not disclosed. Moreover, the disclosure obligation is not only to disclose what is now in your control. It is also to disclose what was but is no longer in your control, by describing it and explaining what has become of it. What the first claimant says in her witness statement does not deal at all with any recordings or transcripts *formerly* in their control but now no longer so. The first claimant's statement also does not confirm that *complete copies* of the recordings and transcripts have been disclosed.

68. I cannot go behind the answers that a party gives in a witness statement supported by a statement of truth, unless I have a proper basis to do so (*eg* an admission, or else actual evidence that there are other documents). No such basis was suggested here. But, to the extent that the answers given by the claimants do not completely answer the allegation made by the defendant, I will make an order to ensure full disclosure. I will therefore require that the claimants by 4 pm on 15 April 2024 either (i) make a further witness statement specifically confirming that they have disclosed all the recordings and transcripts that are now, or have in the past been, in their control, including, in relation to the latter category, what has become of such recordings and transcripts, and have produced for inspection complete copies of the former, or (ii) disclose all such further recordings and transcripts as there may be, or may have been, in their control, and produce for inspection complete copies of all disclosed recordings and transcripts as are in their control so far as they have not so far been so produced.

Overall conclusion

69. For the reasons given above, (i) I dismiss the application for summary judgment, but conditionally on charges of various interests belonging to the claimants being made in favour of the defendant, or alternatively payment into court, in accordance with paragraphs 47-49 above; (ii) I will order a stay of the claim to allow for a second mediation; (iii) I grant the interim injunction sought in terms of the application notice; (iv) I make the directions set out at paragraph 65 above; and (v) I will make an order relating to the claimants' disclosure as set out in paragraph 68 above. I am grateful to both counsel for their helpful submissions, and to the solicitors, present and past, for their work in preparing the case and the application. I express the hope that the parties will be able to resolve their differences without the need for a lengthy and expensive trial. Finally, I look forward to receiving a draft minute of order to give effect to this judgment.