Neutral Citation Number: **[2022] EWHC 341 (Ch)**

Case No: PT-2019-001027

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

Royal Courts of Justice
Rolls Building,
Fetter Lane
London, EC4A 1NL

Date: 18th February 2022

Before:

DEPUTY MASTER RHYS

- -

IN THE ESTATE OF WILLIAM ALAN DAWSON (DECEASED)
BETWEEN:

(1) MRS EVELINE DAWSON
(2) MR PHILIP DAWSON
(in their capacity as joint executors of the Deceased's estate)

Claimants

-and-

(1) MS ANN DAWSON
(2) MS VICTORIA MURDOCH
(3) MS ELIZABETH DAWSON-HILL

Defendants

Ms Lauren Kreamer (instructed by **Browne Jacobson LLP)** for the **Claimants**

Mr Leigh Sagar (instructed by **BLM Law LLP)** for the **Defendants**

Hearing date: **11th to 14th January 2022**

1. By a Claim Form issued on 12th December 2019, the Claimants sought an order for a grant of probate, in solemn form, of the contents of the purported last Will dated 27th February 1989 ("the Will") of William Alan Dawson deceased ("the Deceased"), who died on 10th December 1994. The original of the Will has been lost, and the Claimants seek probate of a subsisting copy. The first Claimant ("Jo") is the Deceased's widow, and the second Claimant ("Philip") his son. The Defendants are the three daughters of the first Claimant and the Deceased – herein referred to as "Ann", "Vicky" and "Liz" respectively. For the sake of convenience and clarity, and for the purposes of this judgment, I have adopted the names used by the parties themselves in their evidence. No undue familiarity is intended.

2. The Claimants' case, in a nutshell, is this. They say that the Will was validly executed, drawn up by a solicitor and in mirror form to that of Jo. It was kept in a locked suitcase at the Deceased's home, Bracken Lane Farmhouse, Retford, and retained until some time after his death. The original was then handed over to a solicitor, Mr Victor Oddie, and was subsequently lost. However, the solicitors who originally drafted the Will – Tracey Barlow Furniss & Co – have retained a copy of the executed document, and the Claimants seek probate of the copy in the absence of the original.

3. The Defendants' case is pleaded at paragraphs 7 and 8 of the Defence, which read as follows:

   "7. The defendants are unable to admit or deny the contents of paragraph 8 of the Particulars of Claim and require the claimants to prove them. If, which is not admitted, the Will Document was a valid will:

   (1) It cannot be found and the defendants rely on the presumption of law that it was destroyed animo revocandi;
   (2) In paragraph 3.1 of a document described as a draft witness statement to be signed by the first claimant … it was stated that the Deceased and

the first claimant made their wills at the same time in 1989 and executed them together. If, as should be inferred from the draft statement, the first claimant was in the same room at the same time as the Deceased signed the Will Document (and the defendants have no personal knowledge of this), that raises the suspicion as to the state of knowledge and approval of the contnts of the Will Document by the Deceased and the defendants put the claimants to proof that the Deceased knew and approved them."

8. The defendants are unable to admit or deny the contents of paragraphs 9 to 19 of the Particulars of Claim and require the claimants to prove them."

4. It will be observed that the defendants are asserting a positive case, as well as putting the Claimants to proof of their allegations that the Will (a) was validly executed and (b) was in existence at the date of death, but was subsequently lost. The positive case relies on (a) the presumption of revocation where a will cannot be found at death, and (b) a plea of want of knowledge and approval.

5. As to the plea of want of knowledge and approval, it appeared to me that the pleaded allegation might be regarded as wholly insufficient, bearing in mind the requirements of CPR Part 57.7(3). The only "particular" alleged is that the Deceased and Jo – at the time of the execution of the will his wife of some 36 years – were present in the same room when the wills were made. Given that the Will was drafted and witnessed by a solicitor, I find it difficult to see how an inference of want of knowledge and approval can be drawn from this solitary allegation. It is true that, in evidence, Liz stated that the Deceased was in the habit of signing documents placed before him by Jo, but these were documents relating to the day to day running of the farm. To be fair to Mr Sagar, who appeared for the Defendants, he said in his opening remarks that he was not proposing to place much emphasis on the plea, but it was not formally abandoned until his closing speech. I had therefore heard all the evidence that he was able to deploy in relation to the plea.

6. In addition to their defence of the claim, the Defendants also put forward a Counterclaim, seeking (a) an order that the Court pronounce against the Will, and (b) a declaration that immediately before his death the Deceased held a parcel of land (which they define as "the 16 acre" and to which I shall refer as "the 16 Acre Field") upon trust for himself and Jo for their lives and thereafter on trust for the

Defendants in equal shares. This counterclaim is grounded in proprietary estoppel. There are two preliminary points to be made.

7. First, although there is no formal grant of representation to the Deceased's estate (pending the resolution of the claim), all interested parties are before the Court. If the claim succeeds, the Claimants will be the Deceased's legal personal representatives. If it fails, there will be an intestacy, and the five parties. between them, constitute the entire class of intestate beneficiaries. Accordingly, any declaration made by the Court would bind the estate beneficiaries.

8. Second, the subject-matter of the estoppel claim has no direct connection with the Claimants' claim to prove the Will. It is free-standing and could have been raised as an entirely separate claim at any time. However, Mr Sagar has submitted in his closing remarks that any findings that I make as to the Claimants' credibility with regard to the estoppel counterclaim must necessarily affect my findings on the claim itself. He submits that the Claimants have lied in their evidence to the Court, and if I reach that conclusion, I should reject the claim, since proof of the claim depends almost entirely on the Claimants' own uncorroborated evidence. By the same token, if I accept the Claimants' evidence as to the circumstances of the execution of the Will, and the loss of the original document, I think Mr Sagar was constrained to accept that his clients were not in a position to put forward rebutting evidence.

The legal framework – proof of the (copy) Will in solemn form

9. Helpfully, Counsel are agreed on the relevant legal requirements. This is how Ms Kreamer's skeleton argument sets out the Claimants' task in this case:

> *"19. The Court will need to be satisfied as to the validity of the Will, in order to make a grant in solemn form of law. The Defendants require the Claimants to prove that the Will was valid, and invite the Court to rely upon the principle of animo revocandi, as well as to infer from the fact that the Deceased and Jo made their wills at the same time that there was want of knowledge and approval of the contents of the Will.*
>
> *20. Section 20 of the Wills Act 1837 provides that "no will or codicil, or any part thereof, shall be revoked otherwise than…by the burning, tearing or otherwise destroying the same by the testator…with the intention of revoking the same". It is clear from early authorities that both elements*

must be present: in Cheese v Lovejoy (1877) 2 P.D. 251 at [263] James LJ held that "all the destroying in the world without intention will not revoke a will, nor all the intention in the world without destroying; there must be the two".

21. The editors of Williams, Mortimer & Sunnucks – Executors, Administrators and Probate (21st Ed.) explain at [11-13] that:

"The strength of the presumption as to the revocation of a missing will traced into the testator's possession varied according to the character of the custody that the deceased had over the will. It is a presumption that may always be rebutted by adducing evidence which raises a higher probability to the contrary. It may be shown that the testator had no opportunity or was incapable of destroying the will, or may establish a combination of circumstances leading to the conclusion that the testator did not himself destroy the will… [I]n modern cases the court has repeatedly held the presumption to be rebutted on a balance of probabilities and has leaned towards testacy (...see Royal National Institute for Deaf People v Turner [2015] EWHC 3301 (Ch))."

22. It is clear that the burden of proving that the will was not destroyed animo revocandi is upon the party propounding its contents (see, e.g., Colvin v Fraser (1829) 2 Hagg. Ecc. 266 at [325]). The standard of proof is the balance of probabilities (see, e.g., Royal National Institute for Deaf People v Turner at [147]) and Singh v Vozniak [2016] EWHC 114 (Ch) at [71], both cases in which the presumption was rebutted on the evidence).

23. Importantly, it is further the case that the presumption that a will has been destroyed animo revocandi arises where the will is missing and it was last known to be in his possession. This is emphasised in Williams, Mortimer & Sunnucks at [11-29]: "where a will, or codicil, is last traced into the testator's possession and is not forthcoming at his death after all reasonable search and inquiry the presumption arises that he has destroyed it with the intention of revocation (animo revocandi)".

10. The Claimants must therefore prove (a) that the Will was validly executed; (b) had not been revoked as at the date of the Deceased's death. The burden of proof is squarely on the Claimants. Given the Defendants' withdrawal of the plea of want of knowledge and approval, I need not consider that point further. In the present case, the original will is not available. As Mr Sagar points out at paragraph 7 of his skeleton argument, a copy of a will may be admitted to probate, and a procedure for that purpose exists under Rule 54 of the Non-Contentious Probate Rules 1987. An application may be made to a district judge or probate registrar, and the application must be supported by evidence as to the will's existence after the death of the testator or, where there is no such evidence, the facts on which the applicant relies

to rebut the presumption that the will has been revoked by destruction. Essentially, that is the approach that the Claimants have adopted in this claim.

The legal framework – the proprietary estoppel counterclaim

11. Although Counsel are agreed on the essential elements of such a claim, they emphasise different aspects. This is how Mr Sagar puts it in his skeleton argument:

> "*18. The following propositions are put forward (per Lewison LJ in Davies v Davies [2016] 2 P&CR 10, para 38, referred to by Floyd LJ in Guest v Guest [2020] EWCA Civ 387, at [47] (**AB 072**)):*
>
> *a. Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part.*
>
> *b. The ingredients necessary to raise an equity are:*
>
> *i. an assurance of sufficient clarity;*
>
> *ii. reliance by the claimant on that assurance; and*
>
> *iii. detriment to the claimant in consequence of his reasonable reliance.*
>
> *c. Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial.*
>
> *d. There must be a sufficient causal link between the assurance relied on and the detriment asserted, judged at the moment when the person who has given the assurance seeks to go back on it.*
>
> *e. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability."*

12. In her closing submissions Ms Kreamer cited this passage from Lord Scott's speech in Thorner v Major [2009] UKHL 18:

> *"Lord Walker…identified the three main elements requisite for a claim based on proprietary estoppel as, first, a representation made or assurance given to the claimant; second, reliance by the claimant on the representation or assurance; and, third, some detriment incurred by the claimant as a consequence of that reliance. These*

> *elements would, I think, always be necessary but might, in a particular case, not be sufficient. Thus, for example, the representation or assurance would need to have been sufficiently clear and unequivocal; the reliance by the claimant would need to have been sufficiently substantial to justify the intervention of equity"*

13. She also drew attention to the dictum of Lord Walker in <u>Cobbe v Yeoman's Row</u> [2008] UKHL 55 in relation to the first limb – representations and assurances: *"Hopes by themselves are not enough"*. She submitted that when determining whether a representation or assurance was made, the court will look at the matter in the round, and within its factual context, considering past events where to do so gives context and background. Put another way, the court can consider the factual background against which the representation or assurance is said to have been made in order to determine whether it was, in fact, made.

14. With regard to the second requirement – reliance – she referred me to these passages from *Snell's Equity* at [12-043]:

    > *"Reliance…is an essential element of B's claim as it forms a link between A's acquiescence, representation or promise and the detriment that B claims he or she will suffer if A is wholly free to insist on A's rights. That detriment is relevant only if it results from a course of conduct undertaken in reliance on A's…promise ……… it has a strong factual aspect: a judge will have to decide if particular action of B was carried out <u>on the faith</u> of a belief that B had or would acquire a right in A's land, rather than merely <u>in</u> that belief."*

    She submits that: "*Put another way, there is an element of causation. The detriment has to be occasioned because of the promise, not merely at the same time as it."*

15. With regard to the third element, detriment, Ms Kreamer emphasised (at paragraph 39 of her Skeleton Argument) that:

    > "*Detriment is only relevant if it results from a course of conduct undertaken in reliance on the promisor's acquiescence, representation or promise (Snell's Equity 34th Ed. para 12-043). If the contribution in question was undertaken for reasons other than reliance on the alleged assurance, proprietary estoppel cannot be invoked (Walsh v Singh [2009] EWHC 3219*

(Ch) at [39], [59]). The editors of Snell's Equity suggest that the approach taken is consistent with the standard "but for" causation test."

16. She referred to a number of authorities, both for general principles, and also as examples of the application of those principles on the particular facts of those cases, all of which of course turned on their own facts. As to the general principles, she cited the judgment of Robert Walker LJ in *Gillett v Holt* [2001] Ch. 210, where he emphasised that while "*the detriment need not consist of the expenditure of money or other qualifiable financial detriment"*, it must nevertheless *"be something substantial"*. He continues: *"The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances"*. In that case, the party asserting the estoppel, Mr Gillett, had continued in Mr Holt's employment throughout his adult life, and not sought or accepted offers of employment elsewhere, nor gone into business on his own account. He had, in other words, foregone career opportunities, he further took no substantial steps to secure his future wealth, and he spent a substantial sum of his own money on a property on Mr Holt's land.

17. She also took me to *Suggitt v Suggitt [2011] EWCH 903*, in which HHJ Roger Kaye QC (sitting as a judge of the High Court) also had before him a proprietary estoppel claim. That case was a son who had worked for much of his adult life on his father's farm, and claimed in proprietary estoppel when the farm was not left to him when his father passed away. At paragraph 59, the judge found, in considering whether detriment had been suffered, that *"John positioned his whole life on the basis of the assurances given to him and reasonably believed by him"*.

The factual background

18. Before I consider the claim and counterclaim in more detail, I shall outline the background to this unfortunate family dispute. This account is either based on the agreed chronology, or on uncontroversial elements of the parties' evidence.

19. Jo was born on 23rd December 1933. On 19th February 1953 she married the Deceased. They had four children: Ann (the 1st Defendant) born in 1954; Vicky (the

2nd Defendant) born in 1959; Liz (the 3rd Defendant) born in 1962; and Philip (the 2nd Claimant) born in 1965.

20. Jo and the Deceased both came from farming families. They established a partnership together under the style WA Dawson Farms. The farm business had started off in a very modest way, with some 20 acres that the Deceased's father had given them at Cottam. In or around 1960 the business began to expand, and by a Conveyance dated 13th April 1960 the Deceased acquired two fields at Bracken Lane, Ordsall, just outside Retford in Nottinghamshire. These fields together amount to some 16 acres in area and constitute the 16 Acre Field. These fields are situated just to the south and west of Bracken Lane Farm, which the Deceased purchased at or around the same time, and to which the family and business moved. It is not clear how much land was comprised in the farm at the beginning, but by the date of the Will Bracken Lane Farm had some 300 acres. The nature of the farming activity has also changed over the years, moving from a pure dairy operation to the current focus on arable. Jo and the Deceased were the partners in the business, although from the late 1980s onwards Philip was closely involved, and although not formally a partner, he was a co-signatory of the farm bank account and seems to have operated to all intents and purposes as an equal partner. Bracken Lane Farm has now grown to comprise some 800 acres.

21. There is considerable dispute as to the precise chronology of the Defendants' residence at and involvement with the farm, which I shall consider when I come to the evidence. In very broad terms the position is as follows. Ann lived as part of the family until approximately 1970, when shortly after her 16th birthday she left home. Although she returned to the farm for a brief period, she moved away from the area to find work and essentially made her own life away from the family from that time onwards. There is much dispute as to the reasons for her departure from the farm, but the bare bones are agreed. Ann bases her estoppel claim on work that she claims to have done on the farm, for no pay, for some 10 years, between 1960 and 1970 when she was aged between 6 and 16 years.

22. Vicky lived on the farm more or less continuously until approximately 1981, when she was 21 or 22 years of age. When she was 17 or 18 she had a baby, Christopher.

He was brought up by Jo and the Deceased at the farm, until he became an adult. There is a dispute as to whether he knew that Vicky was his mother, or believed that Jo was his mother. Jo claims that he only found out that Vicky was his birth mother when he was about 8 years of age but she denies this. It is common ground that Vicky started up in business on her own account in around 1980, when she opened a flower shop in Retford, with the help of a bank loan guaranteed by Jo and the Deceased. She left the farm at around the same time. At this point she married her husband Keith and they lived together from that time onwards. She claims that she continued to work long hours on the farm after that date, and contends that she spent some 25 years working on the farm for no pay.

23. Liz was born in 1962. In her evidence she says that she lived on the farm until she was 23 or 24 and worked for no pay between the ages of 5 and 18. She left to get married at the age of 18 but then returned to the farm when the marriage broke down. She says she continued to work on the farm between the ages of 19 to 24, and 30 to 35.

24. The estoppel is said to arise from certain representations made by the Deceased, in the presence of Jo and Philip, over a period of many years. Each of the Defendants has made a separate witness statement, but each statement contains an identical passage in which the alleged representation is set out. I have taken the following extract from Vicky's witness statement, but it is repeated verbatim in the other Defendants' statements:

> *"16. I have discussed this with my two sisters, and we all agree on what I am about to state.*
> *(1) We were under no illusion that the Farm would be left to us. The Farm, the business, the machinery, the farmhouse and the farm buildings were always going to be left to Philip. That was the way it worked in farming families in those days and it was also going to be the case in our family. But while Dad was alive he always told us that we girls would be looked after; that we would have something and that part of that something was a part of the Farm that the family called "the 16 Acre", which is a field of about 16 acres that lies between Bracken Lane and Grove Coach Road and borders Cross Lane. It is Grade 3 land, good for grazing.*
> *(2) This is something that was told to us many times, from a young age. It wasn't a case of sitting us down and telling us. It was something that just came up from time to time on many occasions in the course of conversation, whether at the table while eating a meal,*

in front of friends and neighbours (all of whom have since died) or while we were working together with Dad. So far as I was concerned, it was always an accepted thing within the family. Mother was part of the conversations and I never once heard her argue against it, disagree or object to it. It was the way that we were told it was going to be in our family.
(3) It was in these circumstances that we worked on the Farm. It was part of our lives that we would be getting the 16 Acre and that we were expected to help on the Farm. We knew that we would be punished if we did not do what we were told. Punishments handed out included scolding, withholding food at mealtime and thrashing with a piece of alkathene hose pipe across the back of our legs. That was life. That was the way it was from an early age, but the older I grew the more I understood that there was a connection between the two things—the work and the assurances about the 16 Acre.

25. The Claimants' response to the estoppel claim is to deny that any representation was ever made. They accept that the Defendants all did some limited work on the farm, as children and young adults, but contend that they did no more than any family members would do when being brought up within a farming family. They also deny that the Defendants have suffered any detriment, whether of a financial or other nature, and that they acted in any way in reliance on an expectation of receiving any benefit.

The Evidence

26. Both claimants made witness statements, upon which they were cross-examined in person – Vicky and Liz likewise. Ann gave her evidence by video link from her home in Italy. In addition to the parties themselves, the Defendants adduced evidence from Ann's daughter Kimberleigh Russell-Welply, and a former supplier to the farm, Mr Robert Mervyn Lawrence. Both these witnesses gave their evidence remotely, and were cross-examined on their statements.

27. The principal factual issues to be resolved on the claim are as follows:
    (a) Did the Deceased make a valid Will?
    (b) Had that Will been revoked at the date of his death?
    (c) Is the copy Will obtained from Tracey Barlow Furniss & Co a genuine copy of that Will?

    The principal factual issues to be resolved on the Counterclaim are as follows:
    (a) Did the Deceased make the Representation?

(b) If so, did the Defendants rely on it?

(c) If so, have they suffered any detriment by virtue of their reliance on it?

28. The evidence in this case is wide-ranging, to say the least. Given the nature of the Counterclaim, it deals with events that took place as far back as the 1950s and, for the same reason, it ranges well beyond the specifics of the alleged estoppel. Indeed, in the course of their evidence the Defendants purport to provide a comprehensive account of their lives from the time of their early childhood and well into adulthood, and in particular a highly charged account of their relationship with their parents. They are deeply critical of and hostile towards their mother and entirely the opposite in relation to their father – they are close to his idolisation. It is not for the Court to speculate on the psychology that lies behind the Defendants' approach to this litigation, but it is tolerably clear that the function of their evidence was as much to ventilate their complaints about their upbringing as to support the specific estoppel claim. Indeed, it is difficult to separate these two strands, which are inextricably woven together. I shall give my assessment of the individual witnesses in due course, but at this stage I merely observe that the obvious animus felt by the Defendants towards their mother did not make the Court's task – to make findings of fact about these long-distant events – any easier.

29. In view of Mr Sagar's submission that the Claimants' credibility is at issue, I propose to make findings of fact with regard to the individual issues raised by the Counterclaim, before considering the evidence on the claim itself.

The Representation

30. I have cited (see para. 24 above) the passage in the Defendants' evidence which is common to all three witness statements, setting out the alleged representation made by the Deceased.

> *"But while Dad was alive he always told us that us girls would be looked after; that we would have something and that part of that something was a part of the Farm that the family called "the 16 Acre"……. This is something that was told to us many times, from a young age. It wasn't a case of sitting us down and telling us. It was something that just came up from time to time on many occasions in the course of conversation, whether at the table while eating a meal, in front of friends and neighbours (all of whom have since died) or while we were working together with Dad. So far as I was*

concerned, it was always an accepted thing within the family. And more colourfully: *"Dad would say "when oat appens to us, you lasses will get the 16 acre, but Philip will get the farm and everything else."*

31. This is what Jo said in her evidence (at para. 38 of her witness statement):

> *"Alan and I were a partnership. Even if a particular field may have been in Alan's name he would never have taken it on himself to discuss any aspect of the farmland with anyone else - including our children - without speaking to me. I find the very idea that this field would be promised by Alan to Ann, Vicky or Liz without me or Philip knowing about it, ridiculous. It is simply made up and one of the most impractical and unlikely suggestions I have ever heard that the three girls were to own a field together. Ann left the farm in 1971, Alan would not have spoken to the three young girls about one field before that and he certainly would not and did not after Ann had left home. Never did any one of the three show a special interest in this field."*

32. She and Philip both vehemently denied that the Deceased made any promise to the Defendants in their presence, and denied that he ever discussed inheritance or the future ownership of the farm or its fields with the family. Philip accepted that he did at times discuss the future operation of the farm business with his father – hardly surprising since he worked full-time in the business from his late teens – but never ownership or inheritance. They point out that the Defendants showed no interest in farming once they had left home, and would have no use for a 16 Acre Field, other than perhaps to sell it back to Philip so that it could continue to be used as part of the farm. They point out that Jo and the Deceased had been approached by a Frank Coney in the early 1990s, who offered to try and obtain planning permission for the field for residential development. Jo says that they entered into an agreement with him, so that they would pay him one-third of the uplift in value if he succeeded. However, the attempt came to nothing. The decision of the planning committee (refusing permission) and a letter from Richmonds solicitors (who had made the application) relating to an appeal are in the Non-Core Bundle 3 (at pp.234-7 and 377-380). Although Mr Sagar put it to Jo that she had been solely responsible for the planning application, she denied this, and it is apparent that the application was made prior to the Deceased's death, albeit that the issue of a potential appeal arose after the death. Both Jo and Philip speculate that the Defendants have raised the issue of the 16 Acre Field because they believed that it might have had some potential for development (albeit that this appears from the agreed valuation report to be unlikely).

33. My conclusion is that no representation or assurance in relation to the 16 Acre Field was ever made by the Deceased to the Defendants, either individually or collectively, whether privately or in front of other family members. I base this finding on all the evidence that I have heard, and my assessment of the witnesses. I have had the following particular considerations in mind:

    a. The Defendants' evidence as regards representations is vague. They talk about things having been said "*in the course of conversation…at the table while eating a meal",* but they do not identify a single conversation, or a single person who heard it said, relying instead on their belief that those who would have been present "*are all dead now".* That is notwithstanding that, when questioned on certain specific individuals from their childhood, the Defendants were unable to say whether or not they were still alive.

    b. It is highly unsatisfactory that their evidence about the alleged representation is identical, and yet they did not seem even know by whom or how those passages came to be written. There are some eight years between the Defendants, and their childhood experiences would have been quite different. Ann, for instance, had left the farm by the time Liz was around eight years old. Yet none of them has provided the Court with their own independent account of the representations they say were made. There are no independent witnesses to these conversations which were said to have been regular occurrences: "…… *on many occasions in the course of conversation, whether at the table while eating a meal, in front of friends and neighbours (all of whom have since died)*."

    c. It is inherently improbable that the Deceased would have made a promise which would necessitate splitting the 16 Acre Field from the rest of the farm at some point in the future. Both he and Jo, and latterly Philip, had worked very hard to expand the farm. Indeed, I accept Jo's evidence that she actually paid part of the purchase price for the field in 1960. It is in my judgment quite out of character for the Deceased to have done anything to reduce the size of the farm. For a father who intended – as is not disputed – for his son to have the whole of the farm and farming business to have given a single field to his three daughters, in the middle of the farm, would have been entirely illogical and improbable.

d. I consider it very unlikely that the Deceased would have made any promises about the 16 Acre Field without discussing it with his wife and business partner.
e. The fact that the Deceased gave instructions for the planning application relating to the 16 Acre Field – and I find that he did give such instructions, together with Jo – is not consistent with a promise that the field would belong to the Defendants at some point in the future.
f. The Defendants did not put forward any claim to the 16 Acre Field until the Claimants sought to prove the Will. Their case is that they never trusted their mother to behave well towards them, so if they felt that they had a claim they would be unlikely to wait such a long time before raising it.
g. It is only in the second round of witness statements (August 2021) that they provide any specific evidence regarding the alleged significance to them of the 16 Acre Field.

34. I conclude, therefore, that no representation – to the effect that the Defendants would inherit the 16 Acre Field after the death of the survivor of their parents, or to any like effect – was ever made.

Reliance

35. Given my finding that the Representation was never made, strictly it is not necessary to consider the other elements of the alleged estoppel – reliance and detriment. However, there are two reasons why it would be desirable to do so. First, in view of the credibility issue raised by the Defendants. Secondly, in case the matter should go further.

36. The Defendants' evidence on the issue of reliance is contained within the passage I have already cited (at para. 24 above) – a passage which is identical in all three witness statements. This is their evidence on this point:

> *It was in these circumstances that we worked on the Farm. It was part of our lives that we would be getting the 16 Acre and that we were expected to help on the Farm. We knew that we would be punished if we did not do what we were told. Punishments handed out by mother included scolding, withholding food at mealtime and thrashing with a piece of alkathene hose*

pipe (a cow-stick) across the back of our legs. That was life. That was the way it was from an early age, but the older I grew the more I understood that there was a connection between the two things—the work and the assurances about the 16 Acre.

37. I shall return to this passage in their evidence in due course, to highlight the essential contradiction that lies within it. For present purposes, however, it may be taken as their evidence that they carried out work on the farm in reliance on the assurance that they would inherit the 16 Acre Field. In order to consider the reliance issue, it is first necessary to make findings with regard to the nature and amount of work done on the farm, and the period over which each of the three Defendants carried out that work. A great deal of the Defendants' evidence goes to this factual issue.

38. The following extracts are from Ann's first witness statement dated 7th August 2020:

> *"Working on the farm*
>
> *7. I worked for around 10 years on the Farm. My jobs, during my childhood years, were to get breakfast ready for Vicky and Liz and cook breakfast for my parents before going to school. I had to make sure that the fire was kept going. One of my chores was to fill the coal bucket in the evening. During this time, I also started to bottle the milk and then help out in the cowshed, getting the scoops of feed stuff for Dad. I always enjoyed this; as usual, we were alone and had some funny times, which was almost impossible when mother was around. It was my job to lay the table for supper, or even, as I got a little older, to make supper. We lived pretty frugally, so cooking was basic.*
>
> *8. Dad was a very hard-working man; twice a day, every day, cows had to be brought in from the field, milked, then turned out again. After that the cowsheds and dairy had to be mucked out and the dairy sterilised. All of the girls helped with this where we could. In fairness, Vicky was much more hands-on with the actual milking side of things. In the early years of this time, my parents did the milk round early in the morning, leaving us at home. It was my job to make sure that by the time my parents got back to the farm, Vicky and Liz were bathed and breakfasted and ready for school, and their own breakfast cooked and keeping warm. Dad would then do the morning milking, etc. When we came home from school, it was our job invariably to bottle the milk and get it ready for the next day's delivery. After that I would return to the house to get Liz and Philip washed and ready for bed and, at least, lay the table and make sure the fire was kept going.*
>
> *9. When I was about 12 years old, it became my job to do the milk round 7 days a week, starting at about 05:30, taking around two and half hours,*

except on Saturday, when we started around 08:30, finishing at about 14:00 in the afternoon. Saturday was money collecting day. This wasn't a matter of helping out, this became part of my job.

10. We girls even had to work on Christmas Day. Life on a farm meant there were always jobs to be done, every day.

Time off

11. I find it really difficult to think about what else we girls would do other than school and work. I am sure we must have had times when we were more like 'normal' kids. We rarely had friends to play, partly because logistically we had no close neighbours and most of our 'friends' lived in the town, or in outlying villages; so much of our time was spent just with family. We did go for walks, collected wildflowers, fished in the pond at the bottom of the long paddock with jam jars tied on string and that sort of thing. Dad made an area out of the orchard next to the house where we could play tennis and bail games, etc. I particularly remember a game of general knowledge we seemed to play endlessly crouched, for some reason, under the table and I remember Dad trying to help me out when I got stuck with an answer, miming the answer to me.

12. I can't remember exactly what we did during school holidays. We had the occasional day trip to the seaside, but there was usually a lot going on with the Farm: hay baling, harvesting and so on, which we girls all had to help with, as soon as we were able to do so. We never had a family holiday; funnily enough it was one of the things Dad regretted, when he was really ill and dying. We made the most of it though, when mother used to take Liz and Philip away on holiday, and it was just the 3 of us at home— I loved those weeks.

13. I enjoyed working with Dad, but I came to loathe the milk round. 1 would finish in the morning sometimes at around 08:30, then cycle to school, which was around 3 miles away, to try and be there by 09:00.1 was invariably late, but a rather lovely teacher, Mrs Lane, would turn a blind eye, as she had seen me rushing around the town delivering milk. When it came to doing 'O' levels, the headmistress. Miss Townsend, interviewed me to discuss the various options open to me. She said 'Ann, there is one big problem for you, in order to do all the revising necessary, the milk round? You need the sleep and the time to do your work'. She clearly had no idea the way we lived. If I had gone home and told mother I had to stop, she would have gone absolutely ballistic, so I said nothing and just carried on. I fainted on the morning of the French exam in the school assembly, so that exam was missed. I scraped through with 5 'O' levels and did one more the following year. I did not tell Dad; it would have created yet another row between my parents. There were constant rows at home, and I think we all tried to protect him, so I toed the line with mother to try and keep the peace. But it wasn't easy; in her eyes I could only do wrong, and I really have never understood this. During our later lives, I have done so many successful things, which you would think she should be proud of, but never

has been. Dad was always chuffed at our achievements and let us know he was proud and encouraging.”

39. These paragraphs are from Vicky’s statement dated 7th August 2020:

“*Working on the farm*

4. Bottling the milk for next morning's round was the first on the list for us. Every night, without fail, this had to be done. We had a retail milk round, doorstep deliveries, which we did every day, only having Christmas Day off, so doubling up on Christmas Eve morning (there was other work to do on Christmas day). Mother collected the money on Saturday morning every week. This was when I became accustomed to the round. I was probably about 5/6 years old at the time. Ann was also doing the delivering of milk with mother. Ann did the first part with mother. Then I'd join for the second part, after helping Dad with jobs, cleaning up after breakfast, and housework. For the rest of the week, we were up 5 am to do the round before we went to school.

5. If Dad asked if I'd got much on at school, I'd always say "no" and help him on the Farm, moving beast [cattle] fencing, tractor driving, silage making, loading bales, going to market. You name it, I did it, rather than go to school. We went to Melton Mowbray Cattle Market regularly, on Tuesdays. Usually, mother and I would go. We would also go to the dairy cow sales. Auctioneers, Norton and Brookesbank held on various farms. The ones we attended were usually within an hour or so drive from the farm. Dad and I would go to the sale and sometimes mother would come. I'd help with ear tagging, de-horning, injections, and getting the calves to drink from the bucket. Liz and I did a good few silage seasons, both taking turns to drive the tractor, while the other sat on the back of it, directing the grass into the trailer with a long handle that you would turn like a starting handle. It made you sweat!

6. We did have some casual labour on the farm sometimes. But these men never did the milk round. They came at busy times, haymaking, harvest, silage making, etc.

7. Dad would wait at the top of the yard for me to come home from school, with his tack on, ready for me to jump off my bike and on to him to fetch the cows for milking. It didn’t matter that I’d got my school stuff on, or that my legs got sore from the stirrup leathers pinching them. It meant two things, I was able to fetch the cows in very quickly and the fact that I was able to ride before my jobs.

8. When I was 17 years old I got pregnant. I continued to do the milk round and work on the Farm until I ran away, which I discuss below.

9. I worked on the Farm for about 25 years in all. After I was married, I had my own business, but I still helped with milking, tractor work and the milk round. I worked for an average 8 hours a day.

40. These paragraphs are from Vicky's witness statement dated 3rd August 2021:

> *"3. I actually started working on the farm when I was 6 years of age. Us girls being tasked with our own "jobs" to do. These included getting sticks and coal in for the next morning. Helping to bottle the milk, feeding calves, fetching cows in and mucking them out.*
>
> *4. From the age of 9 for at least ten years my average weekly working hours working on the farm were approximately 46 hours. My working hours were made up of the following tasks:*
>
> *4.1 3 hours per day six days a week delivering milk; and*
>
> *4.2 7 hours every Saturday delivering milk and collecting the money for it from customers; and*
>
> *4.3 3 hours 7 days a week bottling milk , feeding calves, milking cattle, mucking out and washing down, readying for the next morning's milking.*
>
> *5. The above time spent working on the farm was typical of a basic week. This work was done rain or shine in every kind of weather. On top of the daily work came the seasonal work. Haymaking, silage and harvest time.*
>
> *6. If the cattle got out or was ill or a cow needed help calving even if during the night or early hours I was there to help. During the winter months there was always cattle to look after. Feeding, bedding, mucking out, loading and silage."*

41. This is Liz's evidence in her August 2020 witness statement:

> *"Working on the Farm*
>
> *5. From an early age I remember that we all had our own jobs to do. This could range from chopping sticks and getting coal in for the fire, housework, getting various meals ready, setting the table for mealtimes, etc. Outside, there were loads of jobs we were expected to help with; for example, bottling and delivering milk and working on the Farm. There were lots of variations of work to do on the Farm, depending on the time of year, but it included milking cows; taking the cows to the field in the mornings after milking and fetching them up at around 4 in the afternoon for milking again; mucking out calf sheds; feeding animals; cleaning and mucking out the Parlour and cowsheds; fetching in the hay and straw bales; landwork, which included driving machinery; collection of grass to make silage for cattle; and lots of other jobs that, unless you have a farming background, you could probably never understand. For example, we would help with testing the cows for TB, moving calves into different pens (as they outgrew the smaller ones), laying hedges, fencing, moving electric fencing and painting gates.*
>
> *6. I started to deliver milk when I was around the age of 12, so I had to be up by 5 a.m. If I was late up after mum had shouted at me, she would drive*

off in the Land Rover and I would have to run and catch her up at the first housing estate. In the winter it was very cold and we didn't have any central heating, so I used to put my clothes in bed before I got dressed to warm them up. The latest she'd like to be in town was when the town hall clock struck 6 a.m. Sometimes we didn't get home till around 8:30, which didn't leave a lot of time to get ready for school, which started at 9 a.m. This meant that more often than not I was late. If Dad had time before I went to school, he made me a marmalade sandwich.

7. We made the milk round 7 days a week. I wasn't very tall, so mum gave me a coat to make me look older than I was. In the winter, I used to suffer quite badly with chilblains on my legs, which I used to get bullied about at school when we had PE. This was a result of not having any waterproof clothing, just a big anorak. Its length reached to my thighs so that, when the water dripped off onto my trousers, I would get very cold and the chilblains would occur. My fingers would really hurt also because, although I did have gloves, after about out 15 minutes picking up wet empty milk bottles they got wet and cold so that sometimes they were useless.

8. Winters seemed to be very different in those days. People used to put their empty milk bottles out in the snow the night before and I would have to dig the snow from around the milk bottles and sometimes there was a note in the bottom of the bottle probably saying something like, "no milk today, thank you", which I did not enjoy reading when I was cold wet and hungry.

9. I did the milk round for many years and it was 7-days a week in the morning and most of the day on Saturday, because we had to collect the money. This took place 364 days in the year and, although we did have Christmas morning off, to do this we had to double up on Christmas Eve. That made a lot more work for us, having to bottle twice as much milk the day before, so we could have Christmas morning off. Once again we would be very cold in the dairy with the cold milk running down our fingers when we were bottling it. Even after I had left home, I would on very many occasions help Mum on the milk round. That is not to say that we had Christmas day off. We still had to do work outside on the Farm.

10. Later on in years a chap called Arthur White used to come up to help at the Farm. From my recollection, he originally came for a few hours on a Friday but gradually it turned into about 3 days a week. He would help with building jobs, as he was a bricky for the council before he retired.

11. We did have a housekeeper, who used to come and clean three mornings a week. The first lady that came was called Madge and she started when I was about 6 or 7. We were required to clean the house before she arrived. I still see Madge from time to time in town and we always have a word."

42. The above extracts from the Defendants' witness statements are not comprehensive, in that the statements contain further details of their life on the farm as children and young adults, and the nature and extent of the work that they

claimed to have done. They added further details in cross-examination. However, these extracts do serve to identify the main elements of their evidence, and demonstrate that the Defendants seek to present a very consistent picture of their working life on the farm.

43. Some of the themes that emerge are as follows:
    a. Many of the "jobs" characterised as "*working on the farm*" are the sort of tasks that children in any family might be expected to undertake: chopping sticks and getting coal in for the fire; helping younger siblings get up in the morning; setting the table; getting breakfast for the family.
    b. There is a very marked contrast between the way in which their father is remembered, compared to memories of their mother. They have very fond memories of their father, but bad memories of their mother. I shall consider this aspect in more detail below, particularly the way in which they portray their mother.
    c. This perception of their father feeds into their evidence regarding the work done on the farm.:
        i. This is how Ann describes her "childhood years" (at para. 7 of her witness statement dated 7th August 2020): "*During this time, I also started to bottle the milk and then help out in the cowshed, getting the scoops of feed stuff for Dad. I always enjoyed this; as usual, we were alone and had some funny times, which was almost impossible when mother was around*".
        ii. This is Vicky's recollection (at paras. 5 and 7 of her witness statement dated 7th August 2020): *"If Dad asked if I'd got much on at school, I'd always say "no" and help him on the Farm, moving beast [cattle] fencing, tractor driving, silage making, loading bales, going to market. You name it, I did it, rather than go to school." "Dad would wait at the top of the yard for me to come home from school, with his tack on, ready for me to jump off my bike and on to him to fetch the cows for milking. It didn't matter that I'd got my school stuff on, or that my legs got sore from the stirrup leathers pinching them. It meant two things, I was able to fetch the cows in very quickly and the fact that I was able to ride before my jobs."*

iii. This is Liz's evidence (at para. 15 of her witness statement dated 7th August 2020): *"Later on, in years. Dad bought us a pony and we taught ourselves to ride him. We then used him to fetch the cows up. I remember riding him bare back because we didn't have a saddle, but I was fearless in those days."* At para. 11 of her August 2021 witness statement, in dealing with the 16 Acre Field she says: *"I spent a lot of time with Dad in that field either moving the electric fence, hedge cutting, putting irrigation pipes down, cleaning the dyke out and fetching and taking the cows*."

d. On numerous occasions during their oral evidence they would say that it was their Dad who asked them to help with jobs on the farm. They said that they loved being with him and were more than happy to help.

44. The list of tasks that they say they carried out on the farm is very full. By way of example, this is Liz's description (at para. 5 of her August 2020 witness statement):

"There were lots of variations of work to do on the Farm, depending on the time of year, but it included milking cows; taking the cows to the field in the mornings after milking and fetching them up at around 4 in the afternoon for milking again; mucking out calf sheds; feeding animals; cleaning and mucking out the Parlour and cowsheds; fetching in the hay and straw bales; landwork, which included driving machinery; collection of grass to make silage for cattle; and lots of other jobs that, unless you have a farming background, you could probably never understand. For example, we would help with testing the cows for TB, moving calves into different pens (as they outgrew the smaller ones), laying hedges, fencing, moving electric fencing and painting gates."

45. These are the tasks which the Defendants say that they were carrying out, to a greater or lesser extent, from the age of 6 or 7 in the case of Ann (para. 7 of her first witness statement), age 6 in the case of Vicky (para. 3 of her second witness statement), and "*from an early age*" in the case of Liz (para. 5 of her first witness statement). On their evidence, virtually the entire work of the farm was being carried out by them, from their early childhood onwards. Their father was, of course, a full-time farmer. Their mother operated the milk delivery business and

did the bookwork. Philip worked full-time on the farm from his late teens. They do accept that their father hired "*casual labour*" during busy periods (Vicky) and Liz accepts that Arthur White worked on the farm, for 3 days per week to "*help with building jobs*". The Claimants' evidence was that there were a number of farmhands employed over the years. The farm was much smaller to begin with – just 60 acres when they moved in. The impression that the Defendants give, however, is that as children and teenagers they were carrying virtually the entire burden of running the farm.

46. This was Jo's response in her witness statement (at para. 35):

> *"Generally, throughout the lives of my four children Alan and I did what we could to buy them the clothes that they wanted, gave them pocket money, independence and a freedom to follow their wishes and develop their talents and skills as they wanted. They were never forced to work on the farm as menial labour. They were never made any promises of inheritance. As I say above, I find it deeply hurtful that for what I can only think of as opportunistic reasons of greed all three of my daughters have made up ridiculous and untrue stories about a cruel and impoverished childhood to back up a claim about a promise."*

47. Jo was cross-examined extensively about the milk round, and the other work which the Defendants said that they did around the farm. She said; "*I am not saying that they didn't do work – we all did it together."*. She denied that any of her daughters did heavy jobs around the farm as they claimed – she said they did "*little jobs ..... They could not physically do these jobs – a child did not do them."* She also denied that they helped with the milk round. She said that she did the round, because she could lift the gallon cans, and the 20-bottle crates. She said that originally she and the Deceased would do the milk round, later she had help from Richard Crosland. She referred to Vicky's claim that she began to help with the milk round at the age of 5 as "*a pack of lies*", and that it was illegal to employ a child under the age of 13 and some local farmer had been fined for doing that.

48. Philip, who was born in 1965, gave evidence. In his statement he said that Ann left the farm in 1971, when he was 6 years of age. This is agreed. He said that Vicky

left in around 1981, after she had acquired a flower shop in Retford, and did not return to the farm after that. With regard to Liz, this was his evidence (at para. 7):

> *Elizabeth ("Liz") left the farm in early 1982 and married later that year. Her marriage was short lived and she came back again in 1983. Again this was a short stay while her new partner got a divorce, then she left and moved in with him. She has not lived at the farm since. In about 1990 when the haulage business of her and her partner failed mother and father did pay Liz for some work on the farm but this was as much to help her out during her financial difficulties as it was a proper job on the farm.*

49. In cross-examination, he accepted that they all did some small jobs on the farm. In 1975 the dairy herd was relatively small, perhaps 35-40 cows in all. He accepted that he and his sisters would sometimes feed the calves out of buckets, but the calves would be sold. He agreed that he and his sisters would help with the bottling of milk. This would take place only once a day, in the morning, other than on very hot days when there would be an evening bottling. He could not recall that Liz ever helped on the milk round. He denied that his sisters carried out the extensive work that they claimed – he said that they were *"mistaken or lying"*.

50. My findings on this issue are as follows:
    a. Undoubtedly, the Defendants did carry out certain tasks on the farm, primarily what might be described as the sort of domestic duties that any children in a busy and hard working family would carry out. Looking after siblings, cooking meals, getting in coal or firewood, doing some cleaning.
    b. I accept that, on occasions, the girls did carry out other tasks on the farm. These were light duties, such as feeding the calves out of a bucket, or helping their parents with the bottling of milk.
    c. I find that all three Defendants helped Jo out from time to time with the milk round. However, none of them started until they were at least 13 years of age – it would be illegal to use them before that time and Jo was aware that someone in the area had been fined for doing just that. Although Vicky claimed to have started when she was 5 or 6 (para. 4 of her August 2020 Witness Statement), and joined Ann for the second part of the round, Ann

had no recollection of this and it is highly improbable that a 5 or 6 years old could be of any use on a milk round.

d. I reject the Defendants' evidence that they carried out any of the heavy farming jobs that they refer to in their evidence (see for example Liz's August 2020 statement at para. 5). It is wholly fanciful and inherently improbable to consider that they carried out, as children and as teenagers, the variety and extent of the heavy work that they claim. For much of the period that the Defendants were living at the farm it was a relatively small scale operation – a herd of perhaps 40 dairy cows and 50-60 acres up until the mid-1970s. Their father was a full-time farmer, and Jo was a partner in the farm business and carried out the bookkeeping, as well as organising and carrying out the milk round. I find that they employed casual farm labour throughout the 1960s, 1970s and 1980s. Arthur White was employed on the farm for three days per week – clearly, he must have been doing more than "*building jobs*" around the farm as Liz suggests. Philip, who was born in 1965, worked full-time on the farm once he had left school. It is accepted by the Defendants that their mother employed a cleaner for their home. All in all, there was no need for the farm to employ child labour as part of the farming operation, as the Defendants suggest.

e. I find that Ann left the farm in around 1970 (aged 16) and from that time onwards she did not help out on the farm. Vicky left in around 1981 when she started up the florist's shop in Retford. I reject her evidence, which is inherently improbable, that she continued to help out on a regular basis on the farm thereafter. Liz left in early 1982 when she got married. With the exception of a short period after her marriage broke up, and a period in the 1990s when her husband's haulage business was in difficulty, she did not help out on the farm. She was paid for her work in the 1990s.

f. With the exception of the milk round, all the farming tasks that they did carry out were done voluntarily, at their father's request, and out of a desire to be with their father, whose company they enjoyed, and to help him where they could. When they helped their father they did so because they enjoyed it. Vicky even makes it clear in her August 2020 witness statement that she preferred to help her father with farm work than to go to school.

g. As regards the milk round, and the routine domestic tasks that they refer to, they did this because their mother told them to do them. As children and young adults, dependent on their parents for bed and board, they had no real choice in the matter. As Liz put it, the work they did was *"a contribution to everything in the family"*. It may also be, as Ann stated in cross-examination, that they did what their mother asked because they were afraid of her. This is their evidence: "*We knew that we would be punished if we did not do what we were told. Punishments handed out included scolding, withholding food at mealtime and thrashing with a piece of alkathene hose pipe across the back of our legs."*

h. It is abundantly clear, however, that the tasks that they did carry out were not done in the expectation that they would ultimately receive the 16 Acre Field. The passage in the evidence common to all three Defendants (para. 17 in Ann's witness statement, para. 16 in Vicky's and para. 19 in Liz's) contains a fundamental inconsistency. Although it is their case that they carried out the work on the farm in reliance on the alleged representation, their evidence suggests otherwise. The reference to the punishment that they would receive if they did not do what they were told continues as follows: "*That was life. That was the way it was from an early age, <u>but the older I grew the more I understood that there was a connection between the two things—the work and the assurances about the 16 Acre</u>."(my emphasis).* The suggestion that there was a link between the alleged representation and the "work" is a colourable construct.

i. It follows that I reject Liz's evidence that Jo made this statement: *"I suppose our Ann will come for her share of the 16 Acre*".

51. In conclusion, I find that any tasks that they did carry out on the farm were done (a) because they wanted to help their father; (b) because they did not dare to say no to their mother; and (c) they had no real choice since they were wholly dependent on their parents for their bed and board. They certainly did not do anything in reliance on a promise of the 16 Acre Field.

Detriment

52. I have, of course, held that no assurance or representation was made to the Defendants, or any of them, with regard to the 16 Acre Field. I have also held that, even if such a representation had been proved, the Defendants did not rely on it in any way. For the sake of completeness, and should the matter go any further, I ought to make findings with regard to the third element in the claimed estoppel, namely detriment.

53. In short, none of the three Defendants can establish any detriment, even giving that word the widest and most generous interpretation. It simply cannot be the case that three daughters who have, for some decades, lived away from the family farm, having taken the many and varied opportunities that came their way, and, in Ann and Vicky's case, having chosen to move abroad, can be said to have foregone career opportunities or "*positioned their lives*" on the basis of the alleged assurances. That is what is required for detriment to be established.

54. Ann left the farm at 17 and never returned, save for Christmases and when she travelled abroad for work and needed her parents to look after her children. She now lives in Italy, where she and her husband own a house and a holiday flat. She told the Court in her oral evidence that she and her husband were entrepreneurial, had taken every opportunity that came her way, and had run two very successful businesses in the field of catering equipment and high-end kitchens. Far from having positioned her life in reliance on a promise of inheritance of the 16 Acre Field, Ann's evidence was that she had, as soon as she could, taken decisions which took her away from the farm and that life and was clearly financially comfortable. It is incomprehensible how she could have come to give this evidence (at para. 21 of her August 2020 witness statement):

> *"He [her father] told us that we would receive the 16 Acre and I worked towards it, expecting him to keep to his promise. I have relied on that inheritance. I have no private pension. My husband Tony is ten years older than me and was diagnosed with cancer more than ten years ago. I do not want my children to have to pay for me to be put in a home, if it comes to it.*

Nor do I want them to feel they have to look after me. I am fit and well now, but I am now 66 years old and who knows what will happen in the future."

55. Vicky left the farm at the age of 22. She accepted that her parents had guaranteed part of a loan taken out to establish a flower boutique, though maintained the unrealistic and implausible contention that she had continued to work two full-time jobs: one on the farm and one in the flower shop. Her parents brought up her son, and paid for his private education. She later moved to France, where she told the Court she owns gîtes which are for the use of family and friends only. She evidently has a sufficient income with her husband not to need to rent these out.

56. Liz, too, moved away from the farm at the age of 18 when she married her first husband, though she later returned for a short time after the breakdown of that marriage. She told the Court that she helped her now-husband to run his haulage business, and she also spoke of other part-time work she had carried out even while living at the farm.

57. None of the Defendants has established that their reliance on the representations, if the Court finds that those elements have been established, was to their detriment. They have all lived happy and successful lives. They did not position their lives on the basis of inheriting the 16 Acre Field. It is absurd for Ann to suggest, as she does, that the 16 Acre Field is in some way critical to her financial wellbeing. The same applies to her sisters.

Assessment of the witnesses

58. As will have been apparent from the findings that I have made, I have not accepted much of the Defendants' evidence. I consider that they have grossly exaggerated certain features of the past. In particular, they have exaggerated the nature and amount of work that they carried out on the farm, and the allegedly harsh conditions in which they were brought up. All three Defendants are intelligent, hardworking and successful women with families of their own. They clearly have no actual need for the 16 Acre Field or for the money that it might realise if sold. It is troubling, to say the least, to find that important passages in their evidence are, essentially, not true. One might think that people like them do not generally

concoct a story or grossly exaggerate their evidence in this way. However, large parts of their evidence are concerned with their relationship with their mother, and the numerous reasons why they characterise her as cruel, unloving and abusive. They recall incidents, some quite trivial, from their earliest childhood which, they say, demonstrate Jo's defects as a parent. None of this evidence is directly relevant either to the claim or to the Counterclaim. However, the fact that they considered it necessary to include such evidence – which must inevitably be deeply hurtful to their elderly mother – might provide some sort of explanation for the exaggerated and, in some cases, untrue evidence which they have given.

59. Whilst it would be inappropriate for the Court to speculate on the motivation, or indeed the psychology, that lies behind this evidence, it is entitled to conclude that this very real animus towards Jo has caused the Defendants to recollect their past history through a very distorted lens. I shall give some examples of this.

60. There are numerous passages in Ann's witness statement, and repeated in her oral evidence, when she states that her mother hated her, and never gave her any love. This is how she put it in paragraph 31 of her first statement:

> *"By the time I was 22 or 23 years old, my own life was turning into something more stable and successful and I was becoming more and more independent of her. I think she probably always resented that side of me. When I was trying to buy my first flat, I was slightly short of the amount needed for the deposit, so I asked my parents for a small loan. Dad agreed immediately, but mother added that it would be necessary for them to hold the deeds of the flat; I declined her terms, because it would mean she still had control of my life. I no longer wanted to need her for anything, but it would have been nice to sometimes have had a mother who loved me."*

It would be difficult to think of a more hurtful statement than *"it would have been nice to sometimes have had a mother who loved me."* In a case of this nature, the Court is required to make findings as to an entire family history, going back some 70 years. What is generally lacking, however, is any objective evidence which unequivocally sheds light on the true nature of the relationships, and the family dynamics. In this case, however, some such evidence does exist. The Claimants

have put in evidence a letter written by Ann to her mother on 18th May 1977 – when Ann was 23. It is a handwritten letter running to some 16 pages, and describes the emotional turmoil that Ann was experiencing in her relationship with Tony, her present husband. I need not go into the details of that letter, but I draw attention to the closing paragraphs: *"I have opened my heart to you as I have to no-one else or could have done to anyone else. It is not a contrived letter, purely the facts and how, having reached the age of 23 I am coping with life. I wanted you to know, I don't expect you to understand, but at least you know now………… Anyway, from a daughter to a mother, you've been great, thanks for all your advise and support, despite all our rows too, we've weathered them all. My love, Ann".*

61. This letter was written by Ann at the age of 23, at a time when according to her sworn statement, *"I no longer wanted to need her for anything, but it would have been nice to sometimes have had a mother who loved me."* There are other examples of the selective and frankly misleading nature of her evidence. In cross-examination she accepted that she had omitted to mention facts in her statement that did not support her characterisation of her upbringing. For instance, the fact that as a teenager she had enjoyed a number of holidays to Austria, which her parents had helped to pay for, and had been supported by her mother in her pursuit of becoming a fashion model.

62. This is what Vicky says in para. 41 of her August 2020 statement:

    "In paragraph 18.2 of her defence, mother alleges that my son Christopher was brought up entirely by her and Dad and that he was not aware that I was his birth mother until the age of 8. This is not true. He always knew who I was and referred to me as his mother. He referred to mother as "Jo" and to Dad as "Alan". Indeed, on many occasions mother would say to him "You're not mine, go and see your mother". Mother chose the school for Christopher to go to. Her and Dad paid half the school fees and Keith and I paid the other half."

63. Vicky does not dispute that Christopher was brought up by Jo and the Deceased, or that he remained living at the farm until adulthood. As the extract above indicates, she denied that he ever referred to Jo and the Deceased as Mum and Dad.

However, a series of birthday cards was produced, from which the opposite is apparent. Jo and the Deceased signed themselves as "Mum" and "Dad", and Vicky and her husband Keith sign themselves as "Vicky" and "Keith". Vicky refused to accept that anything in her witness evidence could be inaccurate, even when she was taken to documents proving to her that it was incorrect. She simply provided further, ever-more detailed explanations, to account for the discrepancies, which explanations were entirely absent from her statements.

64. While that is one small issue among many, it is telling as regards Vicky's readiness to construct a narrative to suit the version of events she and her sisters have together put before the Court. She also told the Court that her own allegations about an abusive childhood were entirely consistent with her leaving her own son to be brought up by her mother and father. She did not accept that that made little or no sense. Vicky was also asked about Christopher's private education having been paid for by her mother. Even that, she refused to accept, was the case. She had paid half, she said, and had made those payments to her mother in cash. A further memorable portion of Vicky's evidence related to her younger son, Harry. She was asked about evidence she had given regarding a rift between her and her mother, and her evidence that Harry never visited the farm again after a row in early 1995. That, she said, is because she was concerned for Harry's wellbeing when he was with her mother, who she said had not, on one occasion, fed him. She was then taken to a photograph of Jo, Harry and Father Christmas. Even the act of a grandmother taking her grandson to Lapland to meet Santa Clause was, on Vicky's account, an example of her mother's manipulation. Once again, she refused to accept that it was inconsistent with her evidence.

65. A final example. Liz (see her August 2020 witness statement) vividly describes certain aspects of her upbringing in somewhat Dickensian terms:

> *13. The three of us had to have hand-me-down clothes. If our wellies got holes in them we had to put a bag in them to keep our feet dry and I remember Dad cutting a Kellogg cornflake box up to put in the soles of our school shoes when we had holes in them. We didn't have many toys and, from time to time, there wasn't a lot of food available. But on the other hand we knew no different, so we thought we were happy. My parents paid for my school lunch and this was by way of them giving me the lunch money for the week which I then gave to my teacher at school.*

14. The three of us only had a bath once a week, and that would be on a Sunday night and we had our hair washed. Our bath was in the back kitchen and our toilet was across the yard in a shed, which Dad had to empty probably once a week. The three of us shared a bedroom and my brother Philip would be in Mum and Dad's bedroom. Eventually Mum and Dad rebuilt the bungalow that we were living in and we got a proper bathroom.

66. This passage is interesting for a number of reasons. First, it indicates that the family did not have much spare money in the early years. They lived in a two-bed bungalow. Through the efforts of Jo and her husband they became more prosperous. For example, Liz was sent to a private fee-paying school, which she does not mention. Secondly, she gives the impression that she never had new clothes. She was taken to photographs of her with Philip and her parents on the QE2, when she was about 12. She seems to be wearing a number of very smart different outfits. It is hard to believe that these were all "*hand-me-downs*". Finally, she says that "*we thought that we were happy".* Indeed, she paints a picture of a happy childhood. She and Vicky both had ponies to ride and time spent playing in the fields and fishing in the stream. In cross-examination she was asked about the phrase "*we thought that we were happy".* Tellingly, she replied that as children they knew no better, but having compared notes with friends, she realises that her childhood was hard, or at least not as comfortable as that of others. In my judgment, this neatly illustrates the problem. She is judging the past by standards which are entirely inappropriate to the circumstances of her upbringing, and this has affected the reliability of her evidence.

67. In conclusion, therefore, for these reasons and in the light of my general assessment of them as witnesses as they gave evidence before me, I have not felt able to rely on the Defendants' evidence save to the extent that I have identified.

68. Kimberleigh, Ann's daughter, gave evidence, with regard to a conversation that she had with Jo in 2017. She had not seen Jo since she was a small child and it was not clear if Jo even knew who she was. I do not consider that her evidence was of any assistance. Mr Mervyn Lawrence gave evidence. Although he had not noted it in his written evidence, he explained under cross-examination that he is a long-standing friend of Liz's, and that she had asked him to make his statement. He accepted that he would have come to the farm occasionally, and for as little as half

an hour, when he might not see anybody there. His evidence, similarly, does not go to the matters which the Court is required to determine, and is too vague and general to be of any real assistance.

69. I found Philip to be a straightforward witness, who gave his evidence calmly and apparently dispassionately. He was barely challenged in cross-examination. He does of course have a financial interest as regards the counterclaim, since he stands to inherit the 16 Acre Field if the counterclaim fails, and this might potentially colour his evidence. However, I was given no reason to doubt his veracity and I accept his evidence in full.

70. I think Jo under cross-examination was defensive and grudging in some respects. This is perhaps unsurprising, given the nature of the personal attacks upon her and the hostility of the cross-examination. She admitted that she has little time for the Defendants "*given the trouble they have caused*". I consider that she underplayed the amount of help that she was given on the milk round by her teenage daughters – although I have also found that they have greatly exaggerated their contribution. Overall, however, I consider Jo to be a credible witness. Certainly, I do not regard either Philip or Jo to be unreliable witnesses, such as to have a negative impact on their evidence regarding the Will.

Evidence – the Will

71. The only evidence relating to the Will, its execution and loss, is that of the Claimants – particularly Jo. The Defendants are entitled to put the Claimants to proof, which they have done, but they are not in a position to put forward any contrary evidence. The Claimants have the burden of proving, on the balance of probability, that the Will was valid, that it had not been revoked at the date of the Deceased's death, and that the copy which the Claimants seek to prove is a genuine copy of the original Will as executed.

72. The Will itself (insofar as the copy is genuine) appears regular on its face, with the Deceased's signature applied, and signatures of two witnesses under a standard testamentary attestation clause. One of the attesting witnesses is Arthur White, who (it is agreed) worked part-time on the farm, and the other is the solicitor Mr

Hoyland. This is Jo's evidence as to the circumstances of the execution of the Will, taken from her witness statement:

> *"14 I remember the circumstances in which Alan and I made our wills dated 27 February 1989 quite clearly. This was the first and only will that we made together. Although at that time both of us were in good health we decided that it was important to make wills and ensure that the farm and farming business we had built up should continue. We could not bear to think of it being broken up. By that date Philip was 23 years old. He had told Alan and I that he wanted to be a farmer and indeed that had been evident since he was a young boy. None of the girls said that they wanted to farm.*
>
> *15 Philip worked on the farm as soon as he had left school and then agricultural college. He was competent and hard working and neither Alan nor I wanted to see the farm that we had worked so hard to build up over the years broken up or sold so we were delighted that Philip wanted to continue the farm and we decided to make the wills that we did. I recall going into Retford with Alan and meeting Les Hoyland at the offices of Tracey Barlow Furniss and Co clearly. There was no difficulty about our instructions to Mr Hoyland which were quite clear.*
>
> *16 In my will if I were to die before Alan then I left everything to him, similarly, in his will if he was to die before me he left all his property to me. My will, if I were to survive Alan left some specific bequests to Ann, Vicky and Liz and left the farm to Philip. Alan's will did the same but stipulated that Philip would pay Ann, Vicky and Liz £50 each on their birthdays and at Christmas each year.*
>
> *17 The reason for that difference was simply that Alan wanted to introduce an element of discretion that Philip should, if needs arose, look after his sisters. I knew and trusted Philip that he would do so. I did not think that any conditions or restrictions needed to be put on the support that I knew that Philip would give to his sisters should they need it.*
>
> *18 There was absolutely no differentiation in Alan's or my mind about owning different bits or pieces of the farm. He wanted the farm to be mine if he died first and I wanted it to be clear that it was his if I died first. After our joint deaths it was to pass to Philip. There was no mention at all of the 16 acre field as having different considerations.*
>
> *19 After the wills had been prepared my recollection is that Les Hoyland posted them to Alan and I and that we read them and were happy with them and he subsequently came up to the farm with the originals which we signed and he witnessed together also with Arthur White, who I mention above. We kept the original wills in the farmhouse in a locked suitcase with other deeds and valuables under our bed."*

73. Jo's evidence, confirmed by Philip, as given in her statement and in cross-examination, as to the subsequent events, is as follows. She met the Deceased's solicitor, Mr Vic Oddie from Richmonds solicitors, at the funeral, and she showed him the Will, which was still in the suitcase under the bed, where it had been placed upon execution. Subsequently, Mr Oddie came back to the farm for a meeting which seems to have related, among other things, to the potential appeal against the planning refusal. At the conclusion of the meeting Mr Oddie was given a number of papers, including the original of the Will, which he placed in his briefcase, then left. Jo did not consider that there was any need to take out a grant of probate, since she was a partner in the farm business and she and Philip were signatories of the farm account. Using funds from the partnership bank account she paid two tax bills, for income tax and capital gains tax, but otherwise nothing changed – indeed, the partnership still continues under the Deceased's name. In cross-examination, Jo said that she did not want to change anything, including the title to any of farmland, because it would be too upsetting. *"I didn't want his name taken off anything."*

74. Although she received reminders from time to time from Richmonds, with regard to the estate, she took the matter no further. As she explains in her statement, it appears that Richmonds was taken over, and the successor firm was intervened in by the Law Society. Despite enquiries by her solicitors, it has not been possible to trace the original Will. However, the firm of Tracey Barlow Furniss and Co – of which Mr Hoyland was a partner – retained what they said was a copy of the Will, which they provided to the Claimants, and it is that copy that the Claimants seek to have admitted to probate.

75. Unsurprisingly, both Claimants were cross-examined very thoroughly on their evidence. Two points in particular were put to them. First, the contents of an Affidavit which Jo had made on 23rd May 2019 with a view to obtaining a grant of probate. Paragraph 3.1 reads as follows:

    "The Testator and I made our Wills at the same time in 1989. They were drawn up by Mr Les Hoyland, a solicitor and we executed them at the offices of his firm Tracey Barlow Furniss & Co in Retford. Our wills reflected what we both wanted namely that all our assets should pass to the

> *survivor of the two of us and after our joint deaths to our son Philip. Following the execution of the wills, the original wills were both kept in a locked suitcase in our house at Bracken Lane Farm, Retford."*

It may be observed that this refers to execution of the Will at Mr Hoyland's offices, whereas Jo's evidence in this case is that execution took place at the farm. This may have reflected the correspondence from that firm enclosing the copy will, which refers to the Will having been executed at the office.

76. Secondly, Jo was questioned on a transcript of a conversation that had taken place at Jo's home on 30th May 2019, between Liz, Philip and Jo. The conversation had lasted some 40 minutes, and had been covertly recorded. An application was made to rely on the transcript, which was granted to a limited extent. The particular passage put to Jo was one where there is a discussion about the Deceased's Will and Jo is recorded as saying: "*He made two*". It was therefore put to her that there was another, subsequent will which (it is to be inferred) she had concealed.

77. Jo was also cross-examined at very great length on a series of documents (p.381 onwards in the Non-Core Bundle) relating to a tax assessment and appeal. This related to a Capital Gains Tax charge in the sum of £21,138.70, arising in the tax year 1990/91. The substance of Mr Sagar's point was, I think, that if Jo had been aware of a Will at that time (not long after the Deceased's death), she would have referred to it. Instead, she paid the assessment even though she was not the legal personal representative of the Deceased. Jo's straightforward answer to this was that she was a partner in the business, and any payment of tax would come out of the partnership bank account, to which she was a signatory. There was accordingly no need for a grant of probate and no advantage to be had by obtaining one.

78. The Defendants are, and the Court is, entitled to subject the Claimant's evidence – particularly that of Jo – to very close scrutiny, since their evidence as to the execution and loss of the original Will is both uncorroborated and self-serving. I bear in mind that the burden of proof is fairly and squarely on the Claimants in this regard. My findings are as follows:

a. I am satisfied that a will in the form of the copy Will before the Court was executed in the circumstances described by Jo in her evidence. I do not place much significance on the inconsistency between her current evidence and the Affidavit of May 2019. In any event, the location at which the Will was executed is not of any real importance.
b. It is regular on its face and appears to have been validly attested. Indeed, this raises a presumption of due execution.
c. I do not consider that the statement by Jo in the recorded conversation – that there are two wills – takes the matter any further. It is one line in an ongoing (and heated) conversation. Jo's explanation is that she was referring to two wills, namely hers and the Deceased's, executed at the same time. That seems entirely plausible. It is of course common ground that she also executed a will on the same day, in virtually identical terms.
d. I see nothing in the loss of the original Will to excite suspicion. I accept the Claimant's evidence that the original remained in the suitcase, under the Deceased's bed, until it was handed to Mr Oddie. The loss of the original is entirely explicable given the changes that took place in Mr Oddie's and the successor firm subsequently.
e. Given that the Will remained in the Deceased's possession, in unrevoked form as at the date of death, the presumption relied on by the Defendants does not apply.
f. The terms of the Will itself are not surprising. Indeed, they are entirely consistent with the Defendants' own understanding, that Philip would inherit the farm if Jo predeceased. Nor is there is any real suggestion in the evidence that there would be any reason for the Deceased to revoke his Will, which was made only 5 years before his death.
g. Given that the copy will has been provided by the firm whose solicitor drafted and attested the Will, there can be no doubt that this copy is a genuine copy of the validly executed Will.

Conclusion

79. Accordingly, having regard to the evidence, and the findings that I have made, I conclude that the Claimants are entitled to a grant of probate of the Will in the

form of the copy submitted in evidence. I also dismiss the Counterclaim. I will hear Counsel on the precise form of Order required.

If this draft Judgment has been emailed to you it is to be treated as ‘read-only’. You should send any suggested amendments as a separate Word document.