



Neutral Citation Number: [2023] EWHC 2431 (Ch)

Case No: PT-2022-CDF-000077

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

Swansea Civil Justice Centre
Caravella House, Quay West, Swansea SA1 1SP

Date: 05/10/2023

Before :

HIS HONOUR JUDGE JARMAN KC

Sitting as a judge of the High Court

Between :

LUIGI NICODEMO VASAMI

GRAZIA VASAMI

- and -

TONY HACK

ARLENE HACK

Claimants

Defendants

Mr James Fryer-Spedding (instructed by **Green Solicitors Ltd**) for the **claimants**
Mr Christopher Jones (instructed by **Harrison Clark Rickerby Ltd**) for the **defendants**

Hearing dates: 18-20 September 2023

Approved Judgment

This judgment was handed down remotely at 14.00pm on 5 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

HHJ JARMAN KC:

Introduction

1. The claimants seek possession from the defendants of a farm called Glasfryn, Rhydlewys, Llandysul, Ceredigion, on the basis that the defendants' tenancy has been determined. They also seek arrears of rent, and the return of the dairy herd at Glasfryn, which they say belongs to them, or damages. Mr Hack, who is Mr Vasami's nephew, has lived at Glasfryn with his family and farmed there since it was purchased by his uncle and aunt in 1988. He and his wife say that on the purchase of Glasfryn and frequently since his uncle promised him that the farm would be his after his uncle's days (something which his uncle denies) and that on the strength of that they have worked very long hours there and incurred expenditure, so that his uncle and aunt are now estopped from claiming possession. They deny that they were tenants and say that their occupation was on the basis of a family arrangement and on the basis of his uncle's promises. They say that the herd was transferred to them by his uncle in 2008.

Background

2. The background is largely uncontroversial. Mr Vasami's father came to Wales as an Italian prisoner of war. He worked on farms in the Llandysul area. After the war, he returned to Italy but as work was scarce there then came back to Wales with his family and continued farming work. Through hard work he was eventually able to purchase a farm of his own called Hill View, Croes-lan, Llandysul, where he and his wife raised their daughter and son. The former gave birth to Mr Hack in 1963 and due to her circumstances, he came as a baby to live at Hill View and was raised by his grandparents as their own. His uncle was then about 16 years and over time he too came to look upon his nephew as a son.
3. Hill View comprised some 72 acres and the family as well as keeping a dairy herd there, reared beef cattle and horses. The income generated was not enough to keep Mr and Mrs Vasami Sr, their son and Mr Hack. Upon leaving school Mr Vasami took a job with a local builder, but he helped with the milking and farming at Hill View before and after work and at weekends.
4. Shortly after this Mr Vasami Sr retired from farming, and the business was then carried on by his wife and son. Mr Hack helped with the farming as he grew. By the mid-1980s, Mr Vasani had built a bungalow on Hill View for himself and his family to live in. Mr Hack, as well as helping on the farm, had various other jobs during weekdays in between milking. After school, he went to agricultural college for about one year. He then trained as a mechanic as part of a government scheme, and then worked installing milk parlours. He also helped on neighbouring farms. During this time he helped the Vasami family at Hill view when not working elsewhere.
5. In 1985 Mr Hack married and went to live with his in-laws, and in due course the first of their four children was born. Between 1985 to 1988, he was employed full time at a distribution centre but continued to help with milking at Hill View before and after work and at weekends

6. Mr Vasami was keen to expand the farming business. He and his wife sold the bungalow at Hill View and put the proceeds, together with bank borrowing, towards the purchase of Glasfryn, which was mortgaged to secure the borrowing. Glasfryn is a holding of some 93 acres. Mr and Mrs Vasami, say, and I accept, that they had intended to move into the farmhouse there, but by now Mr Vasami Sr's health was failing, and so they decided to move into the bungalow at Hill View to help care for him. Mr Vasami offered his nephew first the farmhouse at Hill View and then at Glasfryn for him and his family to live in, and to pay him a wage of £460 per month to milk the dairy herd which was to be transferred there from Hill View. Mr Hack agreed. He says, and I accept, that he then gave up his job in the distribution centre. In addition to having the farmhouse rent free, his uncle and aunt paid all the domestic bills, apart from council tax and, later on, the phone bill. The herd and milking equipment were transferred there from Hill View, and that farm was then used to rear calves.
7. In 1992 Mr Vasami Sr died and left his share of Hill View and the business carried on there to his son. At about the same time, Tony Vasami went away to university. In the mid-1990s Mr and Mrs Vasami and their son Tony entered into a partnership with Mr Hack to carry on the farming business at the two holdings, although by then Tony Vasami was working in London. At about the same time Mr Vasami and Mr Hack separately bought several acres of land near Glasfryn to be farmed with it. Mr Hack also started working in about 1999 working part time for an artificial insemination business, mostly by way of telephone sales.
8. In 1999 Mr Vasami purchased 80,000 litres of milk quota. Early in 2003, Tony Vasami wanted to leave London and return to farming in Wales. His parents sold Hill View, and bought a larger farm called Rhydgoch, Ffostarol, also near Llandysul, and moved there. In 2005 Mr Hack continued artificial insemination work for a company called Semex. Also in that year a government subsidy known as a single farm payment was introduced by which owners of farmland were paid according to the amount of land they owned. In that year Mr Hack's wage for farming Glasfryn was increased to £810 per month. There is no evidence before as to the level of wages in the market place at this or earlier times.
9. In 2007, Mr Vasami's mother and sister both passed away. He turned 60 that year and was looking to retire from the partnership. Milk prices were falling, and other sources of income were considered. He converted a barn at Rhydgoch into a restaurant, which his son built up into a successful business and paid his parents rent. Mr and Mrs Vasami still had bank borrowing to service. In 2008, they discussed the way forward with Mr Hack. There are contentious issues concerning such discussions, to which I shall return.
10. However, it is not in dispute that it was agreed that Mr Hack and his wife would take over the milking business at Glasfryn and be entitled to the profits. There were then 80 head of milking cows at Glasfryn. The parties agreed a value of £1000 per head and that this would be paid off over time. It was also discussed that Mr and Mrs Hack would make payments to Mr and Mrs Vasami. Mr Vasami said that he needed £4,000 per month to service bank borrowing and to live on. Two such payments of £4,000 were made in June and July respectively of that year, but no regular payments were made thereafter, despite Mr Vasami frequently chasing his nephew for money. Mr Vasami and his wife have continued to receive annual single farm payments, varying

between £11,000 to £24,000 each year. They also received payments of compensation when some of the cows in the dairy herd contracted TB from time to time and had to be culled.

11. Mr Vasami told his nephew that he and Mrs Vasami had made wills leaving Glasfryn to each other and then to him, Mr Hack. Such wills were made in 2007. Mrs Vasami was unhappy about such a testamentary gift to Mr Hack, but was persuaded by her husband to make the provision. They had made wills previous to this but cannot now remember what provisions they contained relating to Glasfryn. However, in circumstances where money issues arose between the parties, Mr and Mrs Vasami changed their wills in 2009, and to leave Glasfryn to the survivor of them. If one did not survive the other for more than a month, then Glasfryn was left to Mr Hack, but on condition that he paid £100,000 to their daughter, and in default, Glasfryn was left to their daughter and son equally. They did not inform Mr Hack of this change.
12. Despite these issues, the parties continued to co-operate with one another in their respective farming issues. Calves born to the dairy herd at Glasfryn, once weaned, were then taken to Rhydgoch for rearing and insemination, carried out by Mr Hack initially. Once they became milk producing, they were returned to Glasfryn to join the dairy herd.
13. In 2010, Mr Hack became a full-time employee of Semex and entered into a contract of employment requiring him to devote 54 hours each week to telephone sales. He is also a tenant of another 100 acres and receives a single farm payment in respect of that holding.

Breakdown of the relationship and subsequent correspondence

14. Over the next few years the relationship between uncle and nephew deteriorated as a result of a number of issues, as well as the issue of payments which Mr Vasami was chasing. Amongst these was that Mr Vasami had been told by his son that Mr Hack had attempted to take out a loan in Mr Vasami's name, and Mr Hack sold equipment which Mr Vasami believed was his. Moreover by 2021, Mr Vasami was in his early 70s and felt he was getting old. The bank was pressing for repayments. In March of that year the parties had a meeting at Glasfryn, which was also attended by a neighbour, Ian Lloyd. Mr Vasami at the meeting said that he wanted to sell Glasfryn and offered to sell it to Mr and Mrs Hack for £1.4 million. Nothing was resolved at the meeting, and so Mr and Mrs Hack instructed solicitors. There is an issue about whether the issue of promises was raised at this meeting, to which I shall return.
15. Those solicitors wrote to Mr and Mrs Vasami on 1 April 2021, referring to the recent discussions about the sale of Glasfryn to their clients. The letter continued:

“We would confirm that we have been instructed to enter into discussions and would respectfully suggest the following:-

1. That we agree to obtain three valuations from local land agents/surveyors to ascertain the value of the property. Two have been obtained from Evan Bros and Mr Rodney Powell.

2. That it is accepted that in terms of these valuations that it should reflect our client's position as sitting tenants.
 3. That the valuation also considers the investments made by our client and also promises made as to the ownership of the property to Mr Hack since they have been in occupation and tenants since 1988."
16. The letter ended by suggesting an initial round table meeting. In reply, solicitors instructed by Mr and Mrs Vasami asked for details of the promises referred to and what Mr and Mrs Hack were prepared to offer. They also asked for passports for some of the dairy herd at Glasfryn, which herd was referred to as Mr Vasami's cows. In July, those solicitors emailed their counterparts asking for details of the claimed tenancy. The reply from a partner in the firm stated that it was tenancy under the Agricultural Holdings Act 1986 (AHA) on the basis that it was granted prior to 1995. In respect of the promises, this was said.
- "Your client confirmed that our client was to have a lifetime security of tenure. This was confirmed to friends and family and in the Welsh language TV programme "cefn gwlad" who made a programme regarding your client. Our client undertook a number of major long term improvements and short term improvements as a result. They implemented farming practice and a system of dairy farming which benefited the farm. Our client would be entitled to substantial compensation."
17. The reference to the TV programme Cefn Gwlad, the English translation of which is "Countryside," is to a programme broadcast in Welsh in 2001, in which Mr Vasami and Mr Hack were interviewed about the dairy herd at Glasfryn. Mr Hack referred to the many awards the herd had won. There is nothing in the Welsh transcript to support the confirmation of lifetime security of tenure to Mr Hack. In 2009 they both appeared on another Welsh language programme called Ffermio, the English translation of which is "Farming." That focused on the restaurant which had been opened at Rhydgoch. At one point, Mr Vasami said this in Welsh:
- "On i'n fermio cyn agor y restaurant, well oedd ffarm da fi yn Glasfryn, ond fi wedi pasio hwnna nawr i Tony achos fi wedi cael digon o ffermio i ddweud y gwir."
18. The English translation is:
- "I was farming before opening the restaurant, well I had a farm in Glasfryn, but I have passed that now to Tony because I have had enough of farming to tell the truth."
19. Mr Hack, to his credit, made clear in his oral evidence that it is not contended that he owns Glasfryn, or that it was bought for him.
20. By a notice to quit dated 14 October 2021 and served under cover of a letter dated 20 October 2021 Mr and Mrs Vasami gave Mr and Mrs Hack notice to quit Glasfryn "which you hold as tenant" on 30 November 2021. The notice was headed

“Agricultural Tenancies Act 1995.” Mr and Mrs Hack’s solicitors replied by letter dated 22 October 2021, saying that their clients were disappointed that no response had been received to their offer to purchase the farm which they had farmed “on an AHA tenancy since 1988” and that they would seek costs on the basis that their clients had security and “long established occupation with resulting in significant investment on farm clearly cannot be brought to a conclusion by a six week notice period.”

21. By an email in response dated 23 October 2021, the solicitor for Mr and Mr Vasami stated that the basis for claiming security was not set out and asked “What is their case, if they have one?” This was followed by a letter of claim dated 25 October 2021, claiming arrears of rent of £190,000 and return of the dairy herd and passports in respect of some of the herd. In response, arrears of rent were denied and it was stated that “Mr Vasami has agreed” to take the single farm payments and additional government payments “as his rent.” It was also stated that the herd had been placed “under our client’s disposal” which had been bred again or died and had been supplemented by animals purchased by him.
22. By letter dated 24 January 2022, further notices to quit were served, without prejudice to the previous one or one another. Both required possession on 28 February 2022. The first continued “or at the expiry of one month from the end of the now current month of the tenancy” and the second had a similar alternative save that the period was 12 months.
23. An email dated 25 January 2022 was sent in response stating that the termination of an AHA tenancy had to be based on one of the permitted grounds and that the burden was on the landlord to prove the grounds. The letter continued:

“Please note that what we state in this email reply is without prejudice to the primary contention that our client has an ownership interest in the farm by virtue of the equitable principle of proprietary estoppel.”

These proceedings

24. The present proceedings were commenced by a claim form issued in April 2022. The main relief sought possession of Glasfryn, arrears of rent, the return of the herd and related relief. In a defence and counterclaim filed in June 2022, Mr and Mrs Hack seek, amongst other relief, declarations that Glasfryn and the farming assets there are held on trust for them, an order that Mr and Mrs Vasami should discharge the mortgage over Glasfryn, and in the alternative that they have a secure tenancy under the AHA or other legislation.
25. At trial, as well as giving evidence themselves, the claimants called their son and Ian Lloyd to give oral evidence. The defendants filed some 20 witness statements. The trial was listed for five days in Swansea. Many of these statements were very short and did not relate to the main issues in contention. I was concerned about witnesses, some of whom are elderly, having to travel from Llandysul to deal with only a few questions, and encouraged counsel before and at the start of the hearing to attempt to deal with evidence with a view to avoiding this happening.

26. In the event, many of the witnesses were not called to give oral evidence. The statements of some of these were agreed to be put in evidence without the contents being agreed on behalf of the claimants, and I give due weight to those. Others were not relied on at all. The defendants, two of their daughters, Mrs Hack's father, and Lyn Evans, an accountant who acted for the parties, and two other witnesses were called to give oral evidence. This furthered the overriding objective and meant that evidence and submissions were completed in three days. I am grateful to Mr Fryer-Spedding for the claimants and to Mr Jones for the defendants for dealing with the evidence in this proportionate way and for their clear and focussed submissions.
27. Although the parties had worked closely as a family for many years, albeit with issues from time to time as most families have, they are now very bitter towards another. Many allegations as to their respective characters were made against the other side, particularly by Mr Vasami against Mr Hack and vice versa, and particularly in their witness statements. The resolution of many of these allegations, although understandably seen as important by the parties, does not assist in the determination of the issues before me and I deal only with those which do. In their oral evidence each accepted that they were close when Mr and Mrs Hack went to Glasfryn and when the milking business was transferred in 2008. Mr Vasami said he was proud of his nephew. Mr Hack said that he was glad of the opportunity to farm and that he appreciated being given this opportunity. He said more than once how much he loved farming.
28. In the defence and counterclaim, it was pleaded that the promises relied on were made by Mr and Mrs Vasami and Mr Vasami Sr. The latter had no proprietary interest in Glasfryn and it was not asserted that Mr Vasami was present when his father made these promises. In his oral evidence, Mr Hack made it clear that he was not alleging that his aunt made any promises to him, although he maintained that she was present when his uncle made them. He said that the promises were made regularly to him since Glasfryn was purchased that it would belong to him after Mr Vasami's days. At one point in his oral evidence, Mr Hack said the promise was that he would get Glasfryn when his uncle "retired or died." There is quite a difference between the two.
29. Some confirmation of such promises was given in Mrs Hack's witness statement, although it was dealt with briefly. Later on in her statement she said that Mr Vasami told her that Glasfryn was "there for Tony to farm" which she understood to mean it "could come to Tony." She said that that conversation took place before their twins were born in 1996.
30. Mr Vasami denies such promises and his wife said she could not remember any such promises being made. There is no contemporaneous documentation to assist on this issue. In closing submissions made respectively on behalf of them, each made accusations of dishonesty against the other. It was submitted that Mr Vasami lied when he denied in the pleadings and responses under CPR Part 18 that there was a partnership between him and Mr Hack, and did not disclose partnership accounts until after the trial had commenced. It was also submitted that he was combative in cross-examination. On his behalf, it was submitted that Mr Hack lied in his evidence about rent, and that he did not deal with cross-examination in a straightforward way. It was also said that he exaggerated in his witness statement that he ran Hill View on his own and that only he did the milking at Glasfryn. In his oral evidence he accepted that others helped with the milking, although he said this was occasional.

31. I do not accept that either of these witnesses was dishonest in giving their evidence. Mr Vasami is now in his mid-seventies and his involvement in the partnership ceased some 15 years ago. In cross examination on the first day he accepted that there was a partnership and said that he did not know about it until his wife found the accounts. He could not remember why they were not disclosed. She agreed to bring copies of the accounts to court the next day which she did. Had they wanted to hide them they could have destroyed them. Mr Hack would have had access to copies. In my judgment this is more likely to have been an oversight and forgetfulness than an attempt to hide the partnership or the accounts.
32. I will come on to make findings about the rent in due course, but this does not show dishonesty on the part of Mr Hack. There is some force in the other criticisms, that Mr Vasami was somewhat combative in cross-examination, and that Mr Hack exaggerated in his witness statement and in cross-examination at times did not give straightforward answers, at least not initially. In my judgment however, these do not provide meaningful assistance as to whether promises were made or not, and are more likely to be a product of the very bitter and at times emotional adversarial litigation in which these parties, at one time as close as father and son, now find themselves.
33. The impression I formed of these witnesses, and their respective family members, were that they are hardworking honest people who were doing their best to recall what was said and done sometimes many years ago, although now through the fog of bitter adversarial litigation. Each seemed genuinely to believe that he or she was telling the truth. The question is not who is being dishonest, but whose recollection is more likely to be accurate.

Proprietary estoppel-promises

34. The principles of proprietary estoppel, which were not in dispute before me, have recently been thoroughly revisited by the Supreme Court in *Guest & Anor v Guest* [2022] UKSC 27. Although the focus there was on the appropriate remedy once an estoppel was established, Lord Briggs, giving the lead majority judgment, made the following general observations at [4]:

“Two legal rules are engaged here. The first is that a promise is not enforceable unless it is made part of a contract. The second is that a person is free to change his will until he dies (or loses mental capacity to do so). David was, in accordance with those rules both free to renege upon his promise to Andrew, and to do so both by evicting him and then changing his will. But equity may in such circumstances provide the promisee (here Andrew) with a remedy if a promise has been made to confer property upon him in the future, (or an informal assurance that the property is already his) in reliance upon which he has acted to his detriment. The remedy is called proprietary estoppel. The word "proprietary" reflects the fact that the remedy is all about promises to confer interests in property, usually land. The perhaps quaint word "estoppel" encapsulates the notion that the equitable wrong which has been threatened or done is the repudiation of the promise where it would be unconscionable

for the promisor to do. So the equitable remedy is to restrain, or stop or "estop" the promisor from renegeing on the promise."

35. In the absence of contemporaneous documentation, inherent likelihoods are particularly important. Mr Hack says that such promises began at or about the time of the purchase of Glasfryn. At that time, Mr Hack was in his mid-twenties, and the son and daughter of Mr and Mrs Vasami were still at school. Hill View was owned by Mr and Mrs Vasami Sr, albeit that Mr Vasami may have had expectations in relation to inheriting it. Mr Vasami borrowed money to buy Glasfryn and paid his nephew a wage to work there and provided free accommodation with bills paid. The holding was a relatively modest one, and although Mr Hack gave up full time employment to work at Glasfryn, there was no suggestion that it was envisaged that he should carry out this work and no other. In due course he found additional employment and worked at Glasfryn around that, as he and his uncle had done at Hill View. In such circumstances, in my judgment it is unlikely that such promises made were at or about the time Glasfryn was purchased, or whilst these circumstances continued.
36. Those circumstances changed around 2008. Mr Hack accepted in his oral evidence that in 2008 his uncle told him from time to time that he was worried about the bank borrowing and that the possibility of selling Glasfryn or some of the herd there in order to satisfy the bank was discussed between them. On behalf of the claimants, it was submitted that it was unlikely in these circumstances that Mr Vasami, would make promises that Mr Hack would have Glasfryn after his days, implicitly debt free, without making similar promises or provisions to his own children. They might inherit Rhydgoch, but that was not debt free.
37. However, that does not assist greatly as to whether such promises were made at this time. By 2007, Mr Vasami's daughter was living away from Wales, and his son was running the restaurant, albeit paying his parents rent, and also farming at Rhydgoch. Mr Vasami accepts that in 2007 he and his nephew were very close, and that around this time, he wanted to retire from farming.
38. More instructive in my judgment, is how Mr and Mrs Hack reacted in the wake of the meeting in March 2021. They say that they did raise in that meeting that Glasfryn had been promised to Mr Hack after his uncle's days. Mr and Mrs Vasami deny that this was raised in the meeting. Mr Lloyd in his witness statement agreed that this was not raised at the meeting. When he came to give oral evidence, he did so by video link, as he was unwell. It was clear that by then he had no detailed recollection of what was said at the meeting, and he accepted that at the time his herd was calving and that he left the meeting early, although others were looking after the herd. In my judgment little if any weight can be attached to his witness statement on this point.
39. When Mr Hack was cross-examined about their solicitor's correspondence after this meeting, and in particular that part which said the promise was of lifetime security of tenure, he replied that he was not sure who worded that, and that he told his solicitor at the time that he had been promised the farm. He could not understand why there was no reference to such a promise in the correspondence. In my judgment it is unlikely that he did tell his solicitor of such a promise at this time, otherwise that is what would have been set out in the correspondence. That would amount to a classic element of proprietary estoppel, which is and was then a well-established doctrine,

and to a potential defence to any claim for possession and to a potential bargaining tool in discussions relating to the possibility of Mr and Mrs Hack buying Glasfryn.

40. There may be many reasons why, at a given point, a defendant does not raise the issue of promises made (see for example *Moore v Moore* [2018] EWCA Civ 2669 at [74-84]). However, this is not a case where promises are not raised because it might not have been realised they could give rise to enforceable rights, or because of a wish to avoid inflaming a difficult situation. Proprietary estoppel was specifically raised by solicitors on behalf of Mr and Mrs Hack in response to the offer to sell Glasfryn to them or to the request for possession. The matters which were raised, a promise of lifetime security of tenure or a AHA secured tenancy, are both quite different to and not consistent with a promise that Mr Hack would own Glasfryn after his uncle's days.
41. On the facts of this case, if such promises were made, in my judgment it is likely that Mr Hack and/or his wife would have told their solicitor this in the wake of the meeting in March 2021 and/or when his uncle and aunt were pressing for possession. In my judgment it is unlikely that they did raise this at the March 2021 meeting or so inform their solicitor in the months that followed. A proper inference in the circumstances of this case to draw from such a failure is that no such promises were made.
42. Mr Jones submitted that even on Mr Vasami's evidence, it is likely that such a promise was made. When he was asked why he told his nephew about the gift of Glasfryn to him in the 2007 wills, Mr Vasami replied that it was to "reassure him and to make sure he behaved himself." Neither he or his nephew said in evidence that this intention behind informing his nephew of the gift in the will was communicated to his nephew. Whilst the reference to "assurance" suggests a promise, the reference to making sure he behaved himself emphasises that the gift in the will was not irrevocable. It is how a reasonable person would understand what was being said rather than the intention behind the words which is relevant (see, for example, *Thorner v Major* [2009] UKHL 18 [3-5]).
43. As referred to by Lord Briggs in *Guest* and cited above, a person is free to change their will. In *Gillett v Holt* [2001] Ch 210, cited for other purposes by Lord Briggs, Robert Walker LJ at 227H said this:

"Even when the promises or assurance is in terms linked to the making of a will, the circumstances may make clear that the assurance is more than a mere statement of present (revocable) intention, and is tantamount to a promise."
44. In my judgement, on the evidence before me in the present case, the circumstances in which the will was mentioned to Mr Hack do not make it clear that the assurance was more than a mere statement of present and revocable intention. Again, had this been made clear, it is likely that this would have been communicated by Mr and/or Mrs Hack to their solicitors after the March 2021 meeting, rather than an alleged promised of a lifetime security of tenure or a secure tenancy under the AHA. In my judgement it is likely that Mr Vasami's communication to his nephew about the 2007 will went no further than a statement of present and revocable intention and was understood, or at least reasonably understood, as such.

45. In my judgment it is also likely that this is what Mr and Mrs Hack now, after commencement of proceedings, remember as the promises upon which they rely, but that those recollections are mistaken. Other witnesses spoke of their understanding that Mr Hack believed Glasfryn was going to be his, for example, Jonathan Grimes, who acted as a financial monitor for lenders in respect of borrowing by Mr Hack. He said that his interpretation was that Mr Hack was going to inherit, but accepted in cross-examination that there was scope for misunderstanding. In my judgment such evidence takes the matter little further if at all.

Detrimental reliance

46. In case I am wrong in my conclusions in the foregoing two paragraphs, I shall go on to consider whether Mr Hack relied to his detriment on any such promise. Lord Briggs said this of detrimental reliance in *Guest* at [9-10]:

“The equitable “wrong” (if that is the right word) is not the making of the promise in the first place. In almost all the cases, and certainly this one, the promise was genuinely made, in complete good faith, typical of the relations between a farmer and his eldest son, and it was adhered to over more than 25 years. Nor is the detrimental reliance to be classified as harm in any conventional sense. It is usually (and was in this case) something freely and willingly undertaken in the expectation of the fulfilment of the promise, not being daily counted as a cost, still less resented at the time when it was being incurred. Nor is it something which can necessarily or even usually be valued. In the present case, as in many where the promisee is a young person who gives up other career opportunities to work for their parents on the family farm, a measure of the supposed wages differential to date, coupled with interest, will not begin to recognise the improvement in life which further education, an independent career and the opportunities to develop their own farming or other business might have generated. A modest home, bought on an 80% LTV mortgage twenty-five years ago could itself now be worth hundreds of thousands of pounds, because of the meteoric rise in property prices.

10. Nonetheless the detriment is relevant to both the arising of the equity and to the remedy. Without reliant detriment there is simply no equity at all. This reflects the notion that it is the reliant detriment which makes it unconscionable for the promisor to go back on his promise.”

47. At [39], Lord Briggs referred to the judgment in *Gillet* at page 235 where it was emphasised that courts should not take too narrow an approach to detrimental reliance.
48. As mentioned above, in his oral evidence, Mr Hack said that he loved farming. In re-examination, he was asked again why he farmed at Glasfryn. His first answer was that “you do it as you love it, that’s why I did it.” He was then asked about the herd, and why he had inseminated cows at Rhydgoch without payment. His reply to that was “I

was doing it because of the promise of the farm.” Previously, in cross-examination, he said that he helped out at Rhydgoch as family and that they would help out at each other’s farms. Later on he said “we worked as a team.” His wife in her oral evidence said that “we were one big family” but that all that changed at the meeting in March 2021 when Mr Vasami asked for £1.4 million to sell Glasfryn to them. Mr Vasami agreed that his nephew was helping at Rhydgoch and that he was helping at Glasfryn, adding “it was family.”

49. Accordingly in my judgment the evidence as to why Mr and Mrs Hack farmed Glasfryn, and he helped at Rhygoch, is not altogether clear. If promises were made that it would be his after his uncle’s days, then it is likely that he did rely upon that to some extent, but the primary reason is likely to be his love of farming. In this context, promises do not need to be the sole inducement to found an estoppel. Although I accept that Mr Hack gave up his job in the distribution centre in 1988 to work on Glasfryn, it is clear that his farming at Glasfryn has allowed him to pursue other careers, part time since 1999, and full time since 2010 with Semex which provides him with a modest pension and health care. When he was asked in cross-examination whether the opportunity to farm given to him by his uncle was generous, he said that “they were getting something as well” but then added when pressed, as indicated above, that he was glad to have the opportunity, and appreciated it.
50. As for detriment, Mr Hack relies on his hard work in improving the dairy herd at Glasfryn into an award winning herd. There was some dispute about the extent to which he had help from his uncle, from Tony Vasami, and from others, in his work on Glasfryn. As indicated above, he had a tendency to exaggeration as to how much help he received and in my judgment it is likely that he had more than he now recalls. However, I accept that he carried out most of the milking, calving and farming at Glasfryn which meant getting up very early in the morning and milking into the evening, seven days a week apart from illness and holidays. During calving, he would often work well into the night. On top of this was husbandry of the farm and the maintenance and improvement of buildings, plant and machinery. His work for Semex was carried out around his farm work.
51. The accounts show that the farming business at Galsfryn has been very profitable in terms of trading profit, although some years have been better than others. In his oral evidence he said that the milk cheque, which they received from 2008 onwards was on average about £8000 per month to begin with rising to an average of about £16,000 per month during the most recent year. As confirmed by Mr Evans, the accountant, in his oral evidence, taxable profits were lower because of the capital expenditure, such as replacement of dairy equipment. Mr Hack also says that he and his wife paid for a loft conversion and conservatory at the farmhouse at Glasfryn, although he accepted that other renovation works were carried out with the assistance of a local authority grant.
52. Mr and Mrs Hack have farmed Glasfryn for profit and they and their family have occupied the farmhouse without payment to Mr and Mrs Vasami apart from two lots of £4000 in 2008 and perhaps one or two smaller payments later on. I shall have to come on to consider whether a tenancy came into being, later on in this judgment, but for the purposes of weighing up detriment, this is what happened in the event.

53. Mr Hack accepts that in discussing his taking over the milking business at Glasfryn in 2008, his uncle told him that he was worried about servicing his loans without having the milk cheque, which was thenceforth to go to his nephew, and that he would continue to have to make payments in respect of the loans. At one point in cross-examination he said that no figure was discussed, but later said that his uncle did mention £4000 and said that was what he needed. He said that he made the two payments of £4000 in the following two months. In his witness statement he said that these were made in part payment for the dairy herd. In his oral evidence he said that his uncle told him that this was what was needed and that he paid it to “help him out.” Thereafter his uncle was always asking for money.
54. Mr Vasami says that at the time he told his nephew that he would need £4000 per month for two years and thereafter £2000. By then he had an overdraft of £108,000 with a limit of £110,000, and he was paying about £7000 interest every three months. Mr Vasami agreed that thereafter he asked his nephew for what he termed “the rent” but was told he had no money. When asked why he didn’t pursue this, he said that he then trusted his nephew.
55. Mr Vasami’s evidence on this came across in a vivid and at times animated way. To a large extent it is accepted by Mr Hack. Given Mr Vasami’s need to finance the loans in 2008, and well as to live, and although he was receiving single farm payments and rent from the restaurant, it is likely that the parties understood that when his nephew took over the farming at Glasfryn and was in receipt of the milk cheque, he would make monthly payments to his uncle in the sums mentioned by his uncle to help service his loans. The fact that two such payments were made in the months following is likely to be referable to such an understanding, rather than to payments for the herd or to an afterthought. Only a few payments were made and this must be weighed in the balance when considering detrimental reliance.
56. So too must the dairy herd and equipment at Glasfryn. It is not in dispute that the parties in 2008 agreed a price of £1000 per head of the herd giving a total of £80,000, and that that figure was shown in the accounts of both as a loan. Mr Hack to his credit accepts that his uncle has bought cows from time to time which are milked at Glasfryn and that these belong to his uncle. However, he says that the herd was transferred to him in 2008.
57. Some support for this was given by Mr Evans, who acted as accountant to both at the time. Whilst understandably he cannot now remember everything that was said then, he said that the one thing he could remember was the discussion about the £80,000. He said that it was agreed between the parties at the time that the 80 cattle would be transferred to the new partnership of Mr Hack and his wife and shown in their accounts thereafter as their dairy herd. However, later he added that he understood that the herd would remain “in Mr Vasami’s name” until the loan was paid off. In re-examination, he stated that the herd was shown as a “herd basis” which means that it was treated as capital rather than a trading asset and this is how a herd is treated in most farming accounts for tax benefits. He said that when the partnership was dissolved in 2007, a new partnership between Mr and Mr Hack started.
58. It is common ground that after 2008 the 80 head of cattle in the herd remained in Mr Vasami’s name and he retained their passports. In his oral evidence he agreed these were sold to his nephew for £80,000 but that was not paid. He added that they did not

talk about payment. He also added that he was told by Evans that if Mr Hack went bankrupt, the cattle would be secured in his name. When this was put to Mr Evans in cross-examination, he accepted that he suggested showing a loan in the balance sheet “to protect both sides” but denied saying anything about the consequences if Mr Hack went bankrupt. No security for the £80,000 was suggested or arranged and it is difficult to see how Mr Vasami believed there was, unless he misunderstood or has misremembered discussion about protecting the parties.

59. On this point I prefer the recollection of Mr Hack and Mr Evans and find that the parties did agree in 2008 that the then dairy herd at Glasfryn would be transferred to Mr Hack, alone or with his wife, for a sum of £80,000. They said that this sum has been paid, by sales of cows the proceeds of which went to his uncle and also by TB payments for culled cows.
60. The latter in his evidence accepted receiving such payments, but maintained that these were in respect of cows owned by him. He accepted also receiving TB payments, which he said were mostly in respect of cows owned by him, although to his credit he also accepted that some such payments may have been in respect of cows owned by his nephew. At one time Glasfryn and Rhydgoch were farmed under a single holding number, but when there was a TB outbreak his son asked for different holding numbers and there was no TB after that. His explanation for keeping the TB payments referable to his nephew’s cows was that he was not paying what he called rent. On behalf of the claimants, reliance was placed on the fact that the herd remained registered in Mr Vasami’s name and he, initially at least, received TB payments in respect of those culled. Reliance was also placed upon the fact that on one occasion Mr Vasami paid a substantial fine in respect of a failure to produce one of the cows for testing, even though he says that was the fault of Mr Hack
61. On these points I prefer the recollection of Mr Hack, with some, albeit limited, support from Mr Evans. The £80,000 has continued to be shown in the accounts of Mr and Mrs Hack as a loan, and Mr Evans said he had no record of cows which have been culled. In my judgment it is likely that the TB payments in respect of cows owned by Mr and Mrs Hack, retained by Mr Vasami were seen at the time by the parties as referable to the non-payment of the monthly sums referred to above rather than as payment for the herd.
62. I shall deal with Mr Vasami’s claim in respect of the herd later in this judgment, but for the purposes of finding whether there has been detrimental reliance, the transfer and non-payment, or at least substantial non-payment, should weigh in the balance.
63. In my judgment, weighing all these matters up, there is no detrimental reliance. Until 2007 he was paid a wage, had free occupation of the farmhouse at Glasfryn with bills paid, and could and did undertake other paid employment. Thereafter as well as having the opportunity to farm at Glasfryn over 15 years making a healthy profit, Mr and Mrs Hack have occupied the farm and the farmhouse without making substantial payments and without making payments for the herd transferred to him. He has been able to buy land and to rent land, and to develop a full time career with Semex. Although he has incurred capital expenditure, and although this comes from profits generated by his hard work, the opportunity to make those profits was given to him by his uncle and aunt.

Unconscionable conduct

64. Even if there were detrimental reliance, in my judgment it is not unconscionable for Mr and Mrs Vasami now to seek possession. It is unconscionable conduct that permeates all aspects of proprietary estoppel (*Gillett*, page 255, *Guest* [40]). Both sides agree that this was a quasi-bargain case. In my judgment part of the bargain was that Mr Hack should pay regular monthly payments to help with the serving of his uncle's loan and that he should pay £80,000 for the dairy herd, although no timescale was discussed. These understandings have been largely unmet. Even though some payments have been made by way of TB compensation for the cows of Mr and Mrs Hack to Mr Vasami, there were not regular payments which he was expecting to help him service the borrowing, which continued to worry him over the years since. When Mr Vasami was cross-examined about why in March 2021 he sought to sell Glasfryn to his nephew, he said that he went to Glasfryn to say that he was getting old, that the bank was pressing, and that the possibility of the farm being sold was looming. He added "I couldn't take it." That evidence is not surprising in the circumstances described above and was given in a genuine and heartfelt way. I accept it.
65. It follows that the counterclaim based on proprietary estoppel fails. An alternative was pleaded by way of constructive trust, but on the evidence of Mr and Mrs Hack they do not claim any present beneficial interest (see *Spencer v Spencer* [2023] EWHC 2050 (Ch) at [34]). As the basis for proprietary estoppel is not made out, nor is that for a constructive trust.

Arrears of rent

66. As for the arrears of rent claim, I have already made some findings in respect of the understanding of the parties in 2008. Mr Evans recalls the word "rent" being used at the time, but can't recall who raised it. The solicitor's attendance notes of Mrs Vasami in 2009 when the wills were changed, refer to rent, and such references have been made by Mr and Mrs Vasami at various times since. Moreover, Mr and Mrs Hack in correspondence in 2021 and 2022 claimed a tenancy on various bases, in the context of seeking security at Glasfryn. In their oral evidence they said that they had never regarded themselves as tenants and never intended to be.
67. On the other hand, it is clear that the figure requested by Mr Vasami was referable to servicing his loans and not the rental value of Glasfryn. No attempt was made at the time to assess that rental value, and recent valuations suggest that such a value might have been much lower than the figures discussed (and on my finding, understood to be payable) by the parties. Although Mr Vasami requested money from time to time, this was not put on the basis of arrears of rent and arrears were not pursued.
68. One matter which is agreed by the parties is at 2008 and thereafter they worked as a family or a team with each side helping the other. In my judgment it is unlikely that in 2008 or thereafter that the parties intended to enter into a tenancy agreement, and their understanding was more likely to be on the basis of an arrangement within the family. Accordingly the claim for arrears of rent fails

Ownership of the dairy herd

69. I have also made some findings in respect of the herd. There is no claim in respect of payment of the £80,000 and in view of the time that has elapsed since, that may not be surprising. On my finding, the dairy herd was transferred by agreement to Mr and Mrs Hack in 2008 and his aunt and uncle are not entitled to any of the herd or offspring or damages, save in respect of the cows which Mr Vasami has bought since, which remain his.
70. Mr Jones made an alternative submission that the herd was shown, prior to 2007, in the accounts between the Vasamis and Mr Hack as a partnership asset, and when that partnership was dissolved, ownership did not vest in Mr and Mrs Vasami. In light of my finding above, it is not necessary for me to determine this alternative basis, but were it so necessary I would accept that submission.

Conclusions

71. The result is that the claimants' claim for possession of Glasfryn succeeds, but their claims for arrears of rent and return of the herd or damages fails. The counterclaim on the basis of proprietary estoppel or constructive trust fails.
72. Counsel helpfully indicated at the end of submissions that any consequential matters which cannot be agreed can be dealt with on the basis of written submissions. A draft order, agreed as far as possible, should be filed within 14 days of handing down this order, together with any such submissions.