

Claim no. 1BR00933

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

B E T W E E N:

VALLEN INTERNATIONAL LIMITED

Claimant

and

(1) PETER LEWIS

(2) KAMILA LEWIS

Defendants

and

Claim no. HQ10X03438

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

B E T W E E N:

GUY LIPMAN

(as the administrator of the estate of

SHMUEL RAMI LIPMAN (deceased))

Claimant

and

(1) PETER LEWIS

(2) KAMILA LEWIS

Defendants

JUDGMENT

1. These are two consolidated claims concerning the business affairs of Rami Lipman (deceased) and Mr and Mrs Lewis relating to Fairtrough Farm over a 20 year period from 1999 until Mr Lipman's death on 6th January 2009.
2. The first is a claim for possession of Fairtrough Farm, which comprises three parcels of land registered at the Land Registry under the titles SGL589039 (the Farmhouse and neighbouring land), SGL501399 (the majority of the land) and SGL525483 (a crescent of land to the NW of the farmhouse). The defence is proprietary estoppel i.e. that Rami Lipman, the then beneficial owner of Vallen International Limited, gave the land, but not the Farmhouse, (SGL501399 and SGL525483) to Mr and Mrs Lewis for life in 2005, in reward for their services in the project of developing the farm.
3. The second is a debt claim is for the repayment of £260,000 lent to Mr and Mrs Lewis in three alleged tranches. The defence is that only £160,000 was lent and that those lent were verbally released by Rami Lipman in autumn 2005 in compensation for their outstanding project management salary owed to them autumn 2005.
4. This case turns on matters that occurred many years ago. The key dates are 1999 when the terms of business were agreed between the parties; 2001 when various sums were advanced to the Defendants; and 2005 when it is alleged by the Defendants that the Claimant forgave all their debts and gave them the farm.
5. In the absence of Mr Lipman (deceased) the Claimants rely upon the presence, or absence, of contemporaneous documents pieced together by his son, Guy, as the administrator of his father's estate and the witness evidence of professionals who worked for Rami Lipman who was a highly successful businessman.

6. The Defendants rely heavily upon their own witness evidence and recollection of events that only they and Mr Lipman (deceased) were privy to and say cannot now be gainsaid.

7. Therefore in evaluating the evidence the guidance given in the extra-judicial writing of the late Lord Bingham of Cornhill approved by the courts is apposite. In "The Judge as Juror: The Judicial Determination of Factual Issues" published in "The Business of Judging", Oxford 2000, reprinted from Current Legal Problems, vol 38, 1985 p 1-27, he wrote:

". . . Faced with a conflict of evidence on an issue substantially effecting the outcome of an action, often knowing that a decision this way or that will have momentous consequences on the parties' lives or fortunes, how can and should the judge set about his task of resolving it? How is he to resolve which witness is honest and which dishonest, which reliable and which unreliable? . . .

The normal first step in resolving issues of primary fact is, I feel sure, to add to what is common ground between the parties (which the pleadings in the action should have identified, but often do not) such facts as are shown to be incontrovertible. In many cases, letters or minutes written well before there was any breath of dispute between the parties may throw a very clear light on their knowledge and intentions at a particular time....I. To attach importance to matters such as these, which are independent of human recollection, is so obvious and standard a practice, and in some cases so inevitable, that no prolonged discussion is called for. It is nonetheless worth bearing in mind, when vexatious conflicts of oral testimony arise, that these fall to be judged against the background not only of what the parties agree to have happened but also of what plainly did happen, even though the parties do not agree.

*The most compendious statement known to me of the judicial process involved in assessing the credibility of an oral witness is to be found in the dissenting speech of Lord Pearce in the House of Lords in **Onassis v Vergottis** [1968] 2 Lloyd's Rep 403 at p 431. In this he touches on so many of the matters which I wish to mention that I may perhaps be forgiven for citing the relevant passage in full:*

"Credibility' involves wider problems than mere 'demeanour' which is mostly concerned with whether the witness appears to be telling the truth

as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

Every judge is familiar with cases in which the conflict between the accounts of different witnesses is so gross as to be inexplicable save on the basis that one or some of the witnesses are deliberately giving evidence which they know to be untrue . . . more often dishonest evidence is likely to be prompted by the hope of gain, the desire to avert blame or criticism, or misplaced loyalty to one or other of the parties. The main tests needed to determine whether a witness is lying or not are, I think, the following, although their relative importance will vary widely from case to case:

(1) the consistency of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred;

(2) the internal consistency of the witness's evidence;

(3) consistency with what the witness has said or deposed on other occasions;

(4) the credit of the witness in relation to matters not germane to the litigation;

(5) the demeanour of the witness.

The first three of these tests may in general be regarded as giving a useful pointer to where the truth lies. If a witness's evidence conflicts with what is clearly shown to have occurred, or is internally self-contradictory, or conflicts with what the witness has previously said, it may usually be regarded as suspect. It may only be unreliable, and not dishonest, but the nature of the case may effectively rule out that possibility.

The fourth test is perhaps more arguable. . . ."

8. The following guidance of Lord Goff in Grace Shipping v. Sharp & Co [1987] 1 Lloyd's Law Rep. 207 at 215-6 is also helpful:

"And it is not to be forgotten that, in the present case, the Judge was faced with the task of assessing the evidence of witnesses about telephone conversations which had taken place over five years before. In such a case, memories may very well be unreliable; and it is of crucial importance for the Judge to have regard to the contemporary documents and to the overall probabilities. In this connection, their Lordships wish to endorse a passage from a judgment of one of their number in Armagas Ltd v. Mundogas S.A. (The Ocean Frost), [1985] 1 Lloyd's Rep. 1, when he said at p. 57:—

"Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a Judge in ascertaining the truth." [emphases added].

That observation is, in their Lordships' opinion, equally apposite in a case where the evidence of the witnesses is likely to be unreliable; and it is to be remembered that in commercial cases, such as the present, there is usually a substantial body of contemporary documentary evidence."

In that context he was impressed by a witness described in the following terms.

"Although like the other main witnesses his evidence was a mixture of reconstruction and original recollection, he took considerable trouble to distinguish precisely between the two, to an extent which I found convincing and reliable."

That is so important, and so infrequently done."

9. This approach to fact finding was endorsed and amplified recently by Lady Justice Arden in the Court of Appeal in Wetton (as Liquidator of Mumtaz Properties) v. Ahmed and others [2011] EWCA Civ. 610, in paragraphs 11, 12 & 14:

11. By the end of the judgment, it is clear that what has impressed the judge most in his task of fact-finding was the absence, rather than the presence, of contemporary documentation or other independent oral evidence to confirm the oral evidence of the respondents to the proceedings.

12. There are many situations in which the court is asked to assess the credibility of witnesses from their oral evidence, that is to say, to weigh up their evidence to see whether it is reliable. Witness choice is an essential part of the function of a trial judge and he or she has to decide whose evidence, and how much evidence, to accept. This task is not to be carried out merely by reference to the impression that a witness made giving evidence in the witness box. It is not solely a matter of body language or the tone of voice or other factors that might generally be called the 'demeanour' of a witness. The judge should consider what other independent evidence would be available to support the witness. Such evidence would generally be documentary but it could be other oral evidence, for example, if the issue was whether a defendant was an employee, the judge would naturally consider whether there were any PAYE records or evidence, such as evidence in texts or e-mails, in which the defendant seeks or is given instructions as to how he should carry out work. This may be particularly important in cases where the witness is from a culture or way of life with which the judge may not be familiar. These situations can present particular dangers and difficulties to a judge.

14. In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence.

10. This judgment will follow this guidance in fact finding.

The debt claim

11. There is reliable contemporaneous documentary evidence that £260,000 was advanced in the three tranches:

- a. 16th February 2000 £20,000 was transferred from Mr Lipman's FIBI Bank (UK) PLC account number 1111-135879-001 to Mr Lewis' personal account although Mr Lewis has declined to disclose his own bank account;
- b. On 19th June 2000 £80,000 was transferred from Mr Lipman's Chase Manhattan Bank account number 743994695991 to a Lloyds Woolwich Bank account of Mr Lewis (the sum transferred was \$120,000 which was converted into £80,000 at the then prevailing rate of exchange). Again Mr Lewis has not disclosed this account. [562].
- c. On 29th June 2001 £160,000 was transferred in two tranches from Mr Lipman's FIBI account: £80,000 to Mr Lewis; and £80,000 to Mrs Lewis father Jiri Kittler who spent it on buying rare and precious Kinski horses.

12. The loan of £160,000 is evidenced by an agreement dated 28th June 2001 which states as follows:

"This is a formal document relating to an agreement between Mr R. Lipman and Mr P. Lewis.

On this day 29th June 2001 the sum of £160,000 in words one hundred and sixty thousand pounds (afterwards referred to as the monies) has

been lent to Mr P. Lewis by Mr R. Lipman. These monies and interest are to be repaid in full by . . .

This contract will be validated on the transfer of the monies into these accounts: £80,000 to Lloyds TSB – England Account no. 0124988 in name of Mr M. P. Lewis, sort code 30-99-88 and £80,000 to Ceskoslovenska Obchodni Bank – Hradec Kralove, Czech Republic, account no 08-04916 080/0300 in name of Ing. Jiri Kittler, SWIFT: CEKO CZ PPHRK.

I the undersigned fully understand and agree with the above”.

13. The agreement was signed by Mr Lewis.
14. There was no contemporaneous agreement in relation to the £100,000 advanced on 16th February 2000 and 19th June 2000 - at least, no such agreement was found amongst the papers of Rami Lipman on his death. The sums add up to £260,000 and there is evidence that Mr and Mrs Lewis acknowledged indebtedness in that sum.
15. On 31st December 2001 they each signed a declaration in the following terms:

“We the undersigned are today (31.12.2001) in receipt of a personal loan totalling £260,000 (two hundred and fifty [sic] thousand pounds sterling) from Mr Rami Lipman”.
16. None of the loans had an express repayment date.
17. In respect of the loans made on 16th February 2000 and 19th June 2000 there is no direct evidence as to whether the parties agreed that the loans should carry interest. As to the later loan it will the agreement dated 28th June 2001 expressly refers to interest but does not define the rate.
18. As to the date of repayment Chitty on Contracts states (38-247):

“Where money is lent without any stipulation as to the time of repayment, a present debt is created which is generally repayable at once without any previous demand.”

19. As the debts were repayable at once without need for a demand, the estate claims statutory interest under s. 35A of the SCA 1981 at such rate as the court deems fit from the date of each loan to date, alternatively from the date of demand for repayment (9th December 2009) to date.

20. The Defence to the claims for repayment of loans is as follows:

- a. Mr and Mrs Lewis admit the loan of £160,000) but in their Amended Defence plead that it was released in a conversation which took place in September/October 2005;
- b. Mr and Mrs Lewis plead that the document dated 31st December 2001 was not signed by them but admit in evidence that their signatures “look authentic” and in any event all loans were written off in autumn 2005.

21. In my judgment, this is very strong evidence that all of these sums were loaned and the perverse refusal of Mr and Mrs Lewis to accept that casts grave doubts upon their credibility as witnesses and of their explanation of the loans being released in 2005 during the failing development project.

22. Firstly, although the date of the alleged release is pleaded by counsel with some degree of accuracy in the Amended Defence, it is dealt with in the vaguest terms in Mr Lewis’ witness statement (paragraph 1.10 [159]). He simply says Rami Lipman waived the debt “*some years*” after it was made.

23. Secondly Mr Gerstner Yeshayahu gave evidence to the effect that he prepared declarations of capital for Rami Lipman in 2001 and in 2007. He included the loan of £260,000 due from Mr and Mrs Lewis in the 2001 capital declaration. When preparing the 2007 declaration (after autumn 2005) he specifically checked with Rami Lipman to whether the Defendants had cleared their debt and was told that they had not and that it should remain on the “accounts receivable”

list in the 2007 declaration. As a matter of commonsense, it is extremely unlikely that a savvy businessman such as Mr Lipman would have exaggerated his assets to the tax authority by stating that a loan, which had been released, was still payable.

24. Thirdly, Mr Lewis accepted in his witness statement that the signatures on the declaration dated 31st December 2001 look authentic but asserted that they are not those of him and his wife. He changed that evidence under cross examination and could not give any credible explanation for this signed document that had surfaced from the deceased's file. :

" Q In the absence of forgery or trickery, there is no other explanation as to how your signature got there.

A I am not suggesting for one second that Rami Lipman tricked me ever on anything. Be clear on that. Those signatures look similar if not identical. My wife's signature looks more like her signature than my signature but I would say they are both genuine. They look like they are correct. How they got there, I don't know."

25. Fourthly, the Amended Defence filed in August 2011 stated that PL had *"to date been unable to confirm"* whether he had received the £100,000 in his bank account. The Defendants did not give disclosure of bank statements relating to their personal accounts as they ought to have done. An adverse inference is therefore drawn to support the Claimant's contention that it was loaned and the submission that the Defendants are unreliable and incredible witnesses.

26. Fifthly, the estate has produced the bank statements showing that the relevant sums were transferred to Mr Lewis's bank account. In the end Mr Lewis grudgingly admitted that the money probably was transferred to him:

"JUDGE SIMON BROWN: Did you accept that on the overall probabilities

that that money went into your bank account? You would be astonished if I found contrary to that would you not?

A It probably did. If that's what the document supports then it probably did."

The possession claim

27. The ownership and management structure relating to Fairtrough Farm ("the Farm") demonstrates that Rami Lipman put some considerable thought into the structure before ploughing a fortune the development project.

28. The structure was as follows:

- a. Vallen was the registered proprietor of the Farm;
- b. Rami Lipman was the sole shareholder of Vallen. Between September 1999 and November 2001 he was also a director. Thereafter he held a power of attorney.
- c. Fairtrough Farm Limited was the company set up to run Fairtrough Farm and the project. Initially the shares in Fairtrough Farm Limited were held by Mr and Mrs Lewis but in December 2002 they were transferred to Vallen. The directors initially were Mr and Mrs Lewis. In March 2003 Yulia Bahren (then Rummyantseva) was appointed a director but took no part in the management. Mrs Lewis was the company secretary.

29. The farm was purchased by Vallen on 19th July 1999 and Vallen was registered as proprietor on 18th April 2000. The purchase price was £655,000. The funds were advanced by Rami Lipman and he was acknowledged to have provided a shareholder's loan in the sum of £700,000.

30. All the sums spent on the 'improvement' of the farm were provided by Rami Lipman and there is voluminous documentation disclosing numerous instances of Rami Lipman to Fairtrough Farm Limited to pay for expenses.

31. The accounting treatment of those sums was as follows. They were shown as a shareholder's loan in the accounts of Fairtrough Farm Limited, because they had been advanced by Rami Lipman to the company. Any expenses directly related to 'improvements' were also treated as having been made on behalf of the owner of the farm i.e. Vallen and therefore those sums were shown as a debt due from Vallen to Fairtrough Farm Limited. Those sums were, however, diminished by the rent payable by Fairtrough Farm Limited to Vallen.

32. Over time the sums lent by Rami Lipman to Fairtrough Farm Limited increased dramatically as can be seen from the annual accounts signed by Mr Lewis as a director and Mrs Lewis as director and company secretary:

- a. At year end 31st August 2000 the sum owed by Fairtrough Farm Limited to Rami Lipman was £117,109;
- b. At year end 31st August 2001 the sum owed by Fairtrough Farm Limited to Rami Lipman was £191,700;
- c. At year end 31st December 2002 the sum owed by Fairtrough Farm Limited to Rami Lipman was £929,336;
- d. At year end 31st December 2003 the sum owed by Fairtrough Farm Limited to Rami Lipman was £1,131,636;
- e. At year end 31st December 2004 the sum owed by Fairtrough Farm Limited to Rami Lipman was £1,244,136;
- f. At year end 31st December 2005 the sum owed by Fairtrough Farm Limited to Rami Lipman was £1,349,136;
- g. At year end 31st December 2006 the sum owed by Fairtrough Farm Limited to Rami Lipman was £1,421,136;
- h. At year end 31st December 2007 the sum owed by Fairtrough Farm Limited to Rami Lipman was £1,479,136.

33. The year ending 2007 accounts were the last accounts filed by Fairtrough Farm Limited. They are dated 9th March 2010 well beyond the date of the alleged gift of the Farm in 2005.

34. The 2005 accounts and subsequent ones contain a note about the control of Fairtrough Farm Limited reciting that it is a 100% subsidiary of Vallen and that the ultimate controlling party is Rami Lipman by virtue of his 100% holding in Vallen.
35. As the last accounts prepared were for the year ending 2007 the accounts are an incomplete record of the expenditure of Rami Lipman as he lent further sums to Fairtrough Farm Limited between 31st December 2007 and his death on 6th January 2009. In that period Rami Lipman advanced a further £36,000 (in the following tranches: 22nd April 2008 £15,000; 25th June 2008 £12,000; and 4th September 2008 £9,000).
36. There is good evidence of what was the common objective in buying the Farm. Their objectives are set out in the undated document entitled "*Fairtrough Farm Five Year Plan*". This plan is relied on by all parties. The plan was to obtain planning permission for four converted barns to be sold as residences and then sell the Farm off in plots. It showed a total investment over 4 years of £1,425,000 (including the purchase price of £655,000) and suggested a return on the sale of the farm in the fifth year of £3,450,000 i.e. it was an opportunity to more than double the original investment in five years.
37. That document itself gives no indication of the terms of business between Rami Lipman and Mr Lewis. However, a letter from Rami Lipman to Peter Lewis dated 20th September 1998 (i.e. 10 months prior to the purchase of the Farm) suggests what the terms of business may have been. It relates to the contemplated purchase of a 20 acre property in Kent. Under the terms suggested in that letter Peter Lewis was to be entitled to 10% from the net profit if any single additional house were approved (i.e. granted planning permission); a commission of 15% from the net profit for a second additional house; 20% of the net profit from any other additional house.

38. The Defence and Counterclaim in the possession claim sets out the alleged history of the relationship between Rami Lipman and Peter Lewis. At paragraph 4 it pleaded that there were several proposed joint ventures which preceded the purchase of the Farm. It states that *"the essential basis" of all such joint ventures was ". . . the net proceeds of sale would be divided equally between Mr Lipman and the Defendants in equal proportions (50% to Mr Lipman, 50% to the Defendants)."*
39. The Defence and Counterclaim was written prior to Vallen disclosing the letter dated 20th September 1998; Mr and Mrs Lewis did not themselves disclose the letter of 20th September 1998.
40. Mr Lewis's evidence as to the terms of business agreed was disjointed. He disavowed the business plan upon which his pleaded case relied and insisted that was not the operative plan. He insisted that the operative plan was a four year plan despite there being no documentary evidence of the same.
41. As to the terms of remuneration actually agreed (rather than the terms of prior proposed ventures) the Defendants' pleaded case and the case advanced in the witness statements differ.
42. In the Defence and Counterclaim, the case pleaded is that the Defendants would be entitled to a salary of £50,000 each p. a. *"payment of the bulk of which would be deferred pending completion and sale of the properties . . . and derive from the proceeds of the same".*
43. Mr Lewis had no good explanation as to why his case was pleaded in that way. Mrs Lewis said that although she may have been at the meeting where the terms were discussed she was not privy to them as she would have been talking to Rami's friend. Her evidence is therefore simply based on her husband's account.
44. The case advanced in Mr Lewis' witness statement is that they were entitled both to a salary of £50,000 p.a. each and also to 50% of the proceeds of sale.

Furthermore the salary was payable immediately but Mr and Mrs Lewis decided not to take it as the company had not made a profit.

45. The Defences advanced by the Defendants are internally inconsistent and at odds with the picture painted by the documentation revealed of Rami Lipman in his business papers. He was clearly a successful businessman engaged upon a development plan aimed at making substantial profit. He had worked things out in trusting collaboration with Mr and Mrs Lewis who professed to have expertise in the property business as well as a separate business of Kinski horse breeding and dealing.

46. A rudimentary analysis of the figures demonstrates such an agreement would have been ludicrously un-commercial. It is simply incredible that a successful business man, as Rami Lipman undoubtedly was, would have entered into such an arrangement. Rami Lipman would not have agreed to it. The farm was bought for £655,000 and the plan was not to sell it until the fifth year. If what Mr Lewis says is true then by the fifth year the Defendants would have been entitled to £500,000 ($£100k \times 5 = £500k$) even if the project was a disaster and there was no increase in value. Upon the hypothesis that after total expenditure of £1.5m the property sold in the fifth year for £2m. On Mr Lewis's version of events Rami Lipman would in that scenario have been entitled to 0% of the profit as after deduction of their salaries there would have been no profit.

47. Furthermore if Mr and Mrs Lewis had been entitled to a salary it would have been paid by Fairtrough Farm Limited, which was set up to deal with all expenditure in relation to the Farm. They signed off all the accounts of that company and there is no mention in the accounts of a deferred or contingent liability to pay a salary to the same.

48. It is difficult to square the Defendants' case on this with the fact that undoubtedly borrowed £160,000 from Rami Lipman in 2001 if in fact they were at that time owed more than that in salary (2 years at £50,000 each = £200k). If there had

been such an agreement that sum would have been paid as salary and not as a loan and it would have been paid by Fairtrough Farm Limited, not Rami Lipman.

49. In my judgment, the gross discrepancies between the different cases advanced by the Defendants in the pleadings and in the witness statements, and between those cases and the documentary evidence, - and as a matter of business commonsense- strongly indicate that Mr and Mrs Lewis have manufactured their cases on this in the belief that they cannot now be gainsaid in the absence of Mr Lipman, the silent witness through his papers. In my judgment, it is highly probable that the actual deal was one whereby the Defendants would be paid a commission based on a proportion of the net proceeds of sale of additional barns if Fairtrough Farm Limited could obtain planning permission for the same on the green belt site.

50. The basic elements required for a proprietary estoppel to operate are:

- a. The owner of land must encourage another to believe that he will enjoy some future right over certain property;
- b. There must be detrimental reliance by the other;
- c. It must be unconscionable for the owner to act in such a way as to defeat the expectation.

51. The Defendants' pleaded case is that in or about 2005 Rami Lipman orally made statements to the effect that they could *"have the remainder of Fairtrough Farm being the plots of land referred to at subparagraphs 1 (i) and 1 (iii) of the Particulars of Claim as their own property for the rest of their lives"*.

52. The quid pro quo for this, it is said, was that the Defendants would submit planning applications for the use and reconstruction of the Farmhouse as a residential home.

53. The detrimental reliance was said to be the submission of such planning permissions and time and money spent on maintenance and minor improvements.

54. There is no express averment of unconscionability.

55. The Claimant submits that there was no agreement in 2005 as alleged and that even if there was there is no proprietary estoppel as the acts of detrimental reliance are insignificant, or outweighed by countervailing benefits and/or in the circumstances it would not be unconscionable for C to resile from any promises. On the face of it, the assertion that Rami Lipman gave the Farm, less the Farmhouse, to the Defendants for life in 2005, is of an undocumented legal act of extraordinary benevolence on the part of someone in a business relationship.

56. Vallen, already owned both the land and the Farmhouse so there was no need for Rami Lipman to give the land to Defendants order to enjoy the house - the terms of the business plan meant that there was no need for him to give anything up in order to have the use of the house as there was no salary or commission owing to the Defendants.

57. The Defendants case is that Rami Lipman was enamoured with the Farm and wanted to *"have the use of the Farmhouse as a home when he came to the UK"*.

58. The pleading gives the impression of a desirable house awaiting occupation and refers the *"farm house, with its proposed tennis court, gymnasium, snooker room, swimming pool, and beautiful views of perfect horses grazing on a perfect farm"*. That idyllic picture is at odds with reality: in 2005 the Farmhouse was a burnt out shell as a result of a fire which occurred between 1996 and 1998. It was not capable of occupation. It had no roof. This was accepted by both Defendants.

59. When the Farm was purchased the council had resolved to grant planning permission to reconstruct the farm house but that planning permission was subject to the prior completion of a planning obligation tying the dwelling to the holding. No such agreement was completed and no permission was issued.

60. Furthermore by 2005 it had been determined by an inspector that that planning permission had lapsed by reason of the abandonment of the house and that decision had been upheld by the High Court in *Vallen International Ltd v SOS* [2002] EWHC 1107 (Sullivan J.).
61. In any event the lapsed permission was for rebuilding of the existing property and did not encompass "tennis court, gymnasium, snooker room, swimming pool".
62. It would therefore have been incredibly imprudent for Rami Lipman to have given the farm away in the hope of obtaining planning permission for a luxury residence. He would have realised getting such a planning permission was not even remotely feasible.
63. Mr Lewis's explanation for why Rami Lipman had allegedly given the farm was that they had effectively earned it. In cross examination he was taken through the valuation provided by Kinleigh Folkard Heyward in September 2000 which showed that with planning permission for a house and a converted barn the whole Farm might be worth £870,000. Mr Lewis accepted that by the year ended 2002 Rami Lipman had invested £1.6m.
64. Between 2001 and February 2003 the Defendants made several planning applications in respect of the farmhouse all of which failed. There was an appeal to a planning inspector (Jenkins) and a further appeal to the High Court (Sullivan J. There was a stop notice and enforcement notice served 11th June 2002. There was the refusal of an application for certificate of lawful development in June 2002 and finally the refusal of an appeal from that decision in Feb 2003. The site was in green belt and was historically planning blighted by the tenacious but counterproductive planning activities of the Defendants.
65. Mr Lewis accepted that Rami Lipman was worried about his investment and cross.

66. Mr Lewis was taken to a letter from his own planning consultant Mr Downes dated September 2002 which was extremely critical of his conduct of the planning applications. He said that letter would have been shown to Rami Lipman. He also accepted in evidence that he had “cocked up” with the planning and that rather than it being the rural idyll referred to in his statement it was in fact a “nightmare”.

67. In my judgment, it is not remotely credible that Rami Lipman felt that the Lewis’s had ‘earned’ the farm.

68. The formality of the structures in place in relation to the ownership and management of the Farm all point to this was an investment for Rami Lipman. Fairtrough Farm Limited had been formed to manage the farm on behalf of Vallen and to channel investment from Rami Lipman into the farm. If Rami Lipman had given the land over to the Defendants and abandoned the plan to develop the Farm in line with the business plan, then there was no longer any reason for Fairtrough Farm Limited to exist. If the Farm had been partitioned, as suggested, then Fairtrough Farm Limited would have been wound up and its bank accounts closed and it would have ceased to fund the Farm. None of this happened.

69. The Defendants disingenuously avoided questions on this topic by claiming that they paid little attention to what was shown in the accounts. Paper work in this case show that both Mr and Mrs Lewis are capable in business – they had a property management company before this- and very knowledgeable about the project. Mr Lewis did the 5 year business plan and Mrs Lewis submitted detailed accounts to Mr Lipman when seeking funding, some of which went into their own accounts e.g. £8,000 sought to buy cattle although none were ever purchased. Their pleas that they were good and experienced at farming and horse breeding but not business or project management, are deceitful.

70. If there had been a deal in 2005 whereby Rami Lipman gave the land to the Defendants, one would expect to see at least an echo of it in the contemporaneous documents. In fact, the documentation is inconsistent with the alleged deal and strongly indicates that there was no significant change in the relationship of the parties.
71. The alleged quid pro quo for Rami Lipman giving the land to the Defendants was that they agreed to *“cease to submit or arrange for the submission of planning permission applications pursuant to the joint venture as evidenced by the Plan and instead submitted or arranged for the submission of such applications with view to obtaining planning permission for the use and reconstruction of the Farmhouse as a residential house”*.
72. The planning history prepared with the help of the local planning authority, London Borough of Bromley, shows that not a single planning application was made in respect of the house in or after 2005 save that in 2011 Defendant tried to defend an Enforcement Notice by making an application for a certificate of lawful development of part of the house by claiming a flat in the burnt out farmhouse had been occupied for more than 4 years.
73. The focus of the Defendants at that time is revealed by the reports and applications made on their behalf by Tony Kernon, a consultant planning surveyor. His report dated September 2006 relates to outstanding applications and enforcement notices relating to the use of the *land* rather than the *house*. At this time the Defendants were in a near constant struggle with the local planning authority, but the struggle was over their unlawful use of the Farm as a stud.
74. In 2011 they made an application for a certificate of lawful development in respect of the parts of the house they had occupied. That was never determined as the inspector determined that they had no locus in the matter. As a result if the Farmhouse is still occupied it is occupied unlawfully.

75. Mr Kernon gave evidence that there was a long term plan to obtain planning permission for the house by claiming that residential accommodation was necessary for farm workers. That evidence is consistent with the business plan continuing as it had always envisaged obtaining planning permission for the house.
76. The pattern of regular updates on the Farm, usually accompanied by requests for payment from Mrs Lewis to Rami Lipman and a subsequent transfer of funds from Rami Lipman to Fairtrough Farm Limited continued from 2005 right up until Rami Lipman's death.
77. On 17th August 2005 Mr Lewis wrote to Rami Lipman suggesting that Michael Cox (a planning consultant) should be hired. The letter goes on to discuss a scheme for incentive payments of Mr Cox in respect of obtaining planning permission for further barns and a house. The letter refers to putting the house on the market.
78. In September 2005 Mrs Lewis copied Rami Lipman in on a letter that Mr Lewis proposed to send to Mr Cox setting out a sliding scale of remuneration for obtaining various planning permissions.
79. The Farm as a whole was offered for sale on the market between October and December 2005 and was advertised in Estates Gazette. This can only be consistent with the business plan remaining extant and inconsistent with Rami Lipman wanting to keep the Farmhouse as a country retreat. Both Mr and Mrs Lewis gave unsatisfactory evidence in relation to the advert maintaining that it evidenced an intention to let the Farm rather than sell it. The terms of the advert suggest that is highly unlikely. In any event renting the farm out was also against the case set out in their witness statements which was that Rami Lipman wanted *them* and not strangers to be his neighbours.

80. It is clear from the documents that after 2005 Rami Lipman made payments towards the basic upkeep of the Farm and also to enable Fairtrough Farm Limited to obtain planning permission to regularise the use of the Farm. For instance, following professional advice that the existing use of the Farm as a stud farm was in breach of planning and that the Farm needed to be used for agricultural purposes the Defendants removed the majority of horses from the Farm and were advised to buy goats and cattle. On 6th February 2006 Mrs Lewis wrote to Rami Lipman asking for £30,000 to “purchase the goats and a few more cattle, to finish the works and to put all necessary applications in”. In reliance on that, the next day he wrote to FIBI to transfer that sum.

81. Similarly, the request dated 20th June 2008 which contains a breakdown of the items of expenditure in respect of which Rami Lipman was being asked to transfer money including payments: to the planning inspectorate; to Tony Kernon; to roofers & labourers; for haulage; for barley; for tractor parts; for feed; for diesel etc. That was followed on 24th June 2008 by a request from Rami Lipman to FIBI to transfer the sum requested, £12,000.

82. The last transfer was in September 2008 for £9,000 before he died in January 2009.

83. If there had been the agreement suggested in 2005 there really would be no basis whatsoever for Rami Lipman to be making such payments. It defies any rational belief that he was not content with just having given the farm away but he wanted to pay also for the upkeep without any return.

84. Furthermore the fact that he paid for the maintenance and improvement of the farm during the period 2006-2008 undermines the Defendants' pleaded case on detrimental reliance. Their case was that they had paid for these things but they were unable to produce a single piece of evidence to prove this.

85. The Defendants disclosed three witness statements from labourers to establish their case on detrimental reliance. In the case of two of them there were

numerous examples of them in fact being paid by Fairtrough Farm Limited with funds provided by Rami Lipman. In the event the Defendants did not call these witnesses.

86. Guy Lipman states in his witness statement that when he approached Peter Lewis in February/March 2009 he was told that Peter Lewis had a verbal agreement with Rami Lipman that he was entitled to 50% of the proceeds of sale. He was told that it would take 2 years to get the necessary permissions. There was no mention of the Farm (less the house) having been given to them.

87. The Defendants' evidence on this point was as follows:

"Q You said that the deal between yourselves and his late father was that there was a business deal where the farm would be sold and you would split the proceeds 50/50?"

A Yes.

Q That is true, isn't it?"

A I don't remember the exact conversation but I remember something like that, yes. I don't remember the exact words said.

Q And you didn't tell him that his father had given the farm to you?"

A I don't remember, sir. We had different conversation; I don't remember individual conversations, but if that that's what he says ..."

88. In September 2009 Mrs Lewis faxed 3 valuations of the whole farm to Guy Lipman. There would have been no reason to do that if they owned the land themselves, but every reason to do that if they were still maintaining that there

was an agreement to split the proceeds of sale. She was unable to recall the tenor of the conversation she had with Guy Lipman in 2009 or why she obtained the valuations.

89. The Defendants have transparently "improved" their case: in 2009 it was a claim to the proceeds of sale; and in 2011 it became a claim that the farm had been given to them.

90. When the locus of the Defendants to challenge enforcement notices was challenged by in 2011, Tony Kernon wrote the following in an email dated 6th May 2011 :

"Mr and Mrs Lewis' arrangement with Mr Lipman included a division of the assets of the property in the event of sale with a share of assets over and above the purchase price. Provided that the value now exceeds that of 1999 as is highly likely, they therefore have asset value and an "interest"."

91. That email was written as representative of the Defendants and was also copied to Mrs Lewis. She did not demur from that statement. Therefore as late as May 2011 when they were legally represented, their case was based on a claim to the proceeds of sale as opposed to the land having been given to them for life.

92. The absurd story about an alleged gift emerged sometime between May 2011 and August 2011 when the Defence and Counterclaim was served.

93. Even at its highest, the Defendants' case does not make out a case for proprietary estoppel because:

- a. Any detrimental reliance is insignificant;
- b. There are significant countervailing benefits which cancel out any detrimental reliance; and
- c. It would not be inequitable for Vallen to resile from Rami Lipman's representations.

Detrimental reliance

94. The Defendants plead that they did various works "and spent money on the same". There is no evidence that they spent money on the same. They have not disclosed their own bank statements. There is ample evidence that Rami Lipman continued to pay for the running expenses of the farm up until his death. He also paid the wages of workers. The Defendants have failed to produce any evidence of their own expenditure.

Countervailing benefits

95. It is well established that in assessing detrimental reliance the court must take into account any countervailing benefit received by the Defendant. (Megarry & Wade 8th edition 16-016).

96. The Defendants carried out many acts for their own benefit which were not adverted to in the business plan. For instance the Defendants operated a business breeding a rare breed of horse known as Equus Kinsky and operated a business called Equus Kinsky Limited from the Farm. The Defendants represented to Fairtrough Farm Limited's accountants that for the year ending 31st August 2001 the horses owned by Fairtrough Farm Limited were worth £28,193.99. In a decision of a planning inspector dated 28th September 2001, the inspector records that he was told by a witness called by the Defendants that they owned horses to the value of £750,000. As all the expenses of the Farm were paid for by Fairtrough Farm Limited, which was funded by Mr Lipman's loans, the Defendants had an opportunity to profit significantly from their occupation of the Farm by using it for horses owned by themselves and/or by Equus Kinsky Limited.

97. Similarly they have rented parts of the Farm out as a campsite but not accounted to Fairtrough Farm Limited during its existence, or to Vallen since, for the profits received.

98. The rent payable by Fairtrough Farm Limited to Vallen for occupation of the Farm was c. £50,000 (£48,900 in 2001 and £50,000 in subsequent years). That figure derives from an estimate of the commercial rent provided by Mrs Lewis to Fairtrough Farm Limited's accountants. If as the Defendants contend the business plan was torn up in 2005 they have had 7 years of rent free occupation of the farm worth (7 x £50,000 =) £350,000. In that context such detrimental reliance as the Defendants are able to prove is insubstantial.

Conscionability

99. For the same reason it is not inequitable for Vallen to resile from any representation that Rami Lipman may have made. Further to the extent it is relevant the Defendants have not been good stewards of the farm. The Defendants claim that the value of the farm is £900,000. That is compared to an initial purchase price of £655,000 and further investment of c. £1.5m. It can be seen that this was an appalling investment for Rami Lipman. He lost money even in a rising market and the valuation evidence suggests that the planning breaches and chequered planning history have stigmatised the Farm.

100. There are thus numerous instances where the evidence of the Defendants was either internally inconsistent; inconsistent with contemporaneous documents and other witnesses. As to inherent probability the Defendants set a high bar when they declared that their case was based on having earned the farm given (i) the planning history (ii) the level of investment by Rami Lipman and (iii) the fact that all of their planning failures were known to Rami Lipman.

Credibility

101. Both Defendants were able to present their cases with considerable skill in court and had detailed knowledge of the paperwork. A very good grasp of the details.
102. Mr Lewis was deliberately obtuse as a witness. He was nervous about answering a question without being taken to a document. He prevaricated. He gave irrelevant answers. It is clear that on at least one occasion he told an outright lie. His explanation as to why Yulia Bahren "would say that" in her witness statement in support of the Claimants case was that she had been given an expensive Ferrari by the Estate. However it was shown that he had told his wife that the car had been given to Yulia or her mother by Rami Lipman *before his death*.
103. At the very start of his evidence he was vehement that Vallen's first registered office had been at his office address in London and that he had been a director. Both statements were demonstrably untrue but he appeared almost blithe to the actual position when it was pointed out to him. The location of the registered office and whether or not he was a director were pretty immaterial to the case but it was a good example of him being reckless as to the truth.
104. Mrs Lewis's credibility as a witness was impaired by the fact that she admitted lying in a statutory declaration directly under the oath. She admitted that she realised that the lie was highly material to one of the key issues to be examined in the inquiry where it was to be produced as evidence i.e. her locus to bring a planning appeal.
105. In my judgment, both Defendants have brought false claims in the belief that they cannot be gainsaid by the Deceased. His papers make him a powerful silent witness. Mr and Mrs Lewis know these papers now intimately and sought to find a way round them by telling a pack of lies. They are inherently untruthful people in their own self interests and were in these claims and in court. Mr Lipman mistakenly placed his trust in them and they have abused that trust for their own gain and by these claims sought to continue to do so.

Conclusion

106. Accordingly, I order that judgment be given to the Claimants in both claims.

107. The Claimants are entitled to judgment on the sum of £260,000 plus statutory interest at a rate to be determined by the court from 10th September 2004; an order for possession of the farm; mesne profits from 31st March 2010 (the date upon which they were asked to vacate in the letter before action dated 9th December 2009 until the date that they are ordered to give up possession at the same rate as Fairtrough Farm Limited paid rent to Vallen i.e. £50,000 p.a.; costs on an indemnity basis in view of the Defendants' conduct in defending these proceedings without any or any sufficient evidence and in the light of their performance as witnesses; and an order for an immediate payment on account in respect of those costs.

A handwritten signature in purple ink, appearing to be 'S. Brown', with a small mark below the 'n'.

His Honour Judge Simon Brown QC
Section 9 of the Senior Courts Act

25th June 2012