Neutral Citation No: [2020] NICh 7 ***Judgment: approved by the Court for handing down (subject to editorial corrections)****	***Ref:*** **McB11212** ***Delivered:*** **28/04/2020**

2017 No 41599

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

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BETWEEN:

ERNEST GRAHAM

Plaintiff;

and

MATTHEW GRAHAM and KAREN GRAHAM

Defendants.

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McBRIDE J

Introduction

[1] This is an unhappy dispute between a 90 year old father and his 45 year old son, who, until 2015 had worked happily together on the family farm in County Fermanagh.

[2] The plaintiff, Ernest Graham is a retired farmer. He and his late wife Beryl had eight children; seven daughters and one son – Matthew Graham, the first-named defendant. Matthew is married to Karen Graham the second-named defendant.

[3] On 13 April 2017 the plaintiff applied for and was granted an *ex parte* injunction restraining his son Matthew from interfering with the lands they had previously farmed together.

[4] On 27 April 2017 the plaintiff issued a writ seeking:

(a) Damages for trespass to his lands situate at –

(i) The Graan, Cavanakeery and Ratona, comprised in Folio 12178 County Fermanagh;

(ii) Cleggan comprised in Folio 7771 County Fermanagh; and

(iii) Moneyourgan comprised in 12891 County Fermanagh (collectively known as "the lands").

(b) A declaration that he is the sole legal and beneficial owner of the lands.

(c) An injunction restraining the defendants from interfering with or trespassing on the lands.

[5] The first-named defendant issued a counterclaim in which he claimed that he had an equitable interest in the lands by reason of the operation of the doctrine of proprietary estoppel and he sought a declaration that the lands vested in him absolutely together with damages and injunctive relief.

[6] Until recently the plaintiff and his late wife had resided in a retirement bungalow situate in close proximity to the farmhouse at The Graan. This bungalow is comprised in Folio FE3521. It does not form part of the lands in dispute.

[7] The lands were valued by Mr Harold Montgomery of Montgomery, Finley & Company, Chartered Surveyors, Auctioneers and Estate Agents. He was unable to give oral evidence due to ill health but he prepared two reports for the court dated 27 February 2018 and 15 December 2018. He also filed affidavit evidence sworn on 13 April 2017 in relation to the injunction application. He valued the lands at Cleggan and Moneyourgan, which in total comprise 39.5 hectares, at £150,000. He valued the retirement bungalow, garden and paddock at £250,000. He valued the farmhouse, sheds and the farm of 128.5 acres at The Graan at £1.5M and valued the 40 acres at Ratona at £350,000. The lands in dispute therefore in total are valued at £2M. The plaintiff also owned lands at Drumboory and Cavanakeery which were sold for approximately £1M to finance the debt due to Northern Bank. Therefore the entire value of the lands owned by the plaintiff before payment of the Northern Bank debt was approximately £3M.

Representation

[8] The plaintiff was represented by Mr Brian Fee QC and Ms Nessa Fee of counsel. The defendants were represented by Mr McEwan of counsel. I am grateful to all counsel for their detailed skeleton arguments and carefully crafted closing submissions which were of much assistance to the court.

Evidence

[9] The evidence before the court consisted of a number of lengthy affidavits, oral evidence by the father which was taken on commission, and 12 days of hearing oral evidence from a number of other witnesses. As the issues were widespread and spanned several years I intend to set out the background facts which are not in dispute. I will then set out in summary form the evidence of each witness, the legal

principles, my findings of fact and my consideration of the evidence and the issues in dispute.

Background

[10] After the hearing commenced and the court had heard evidence for a number of days, the parties decided to enter into mediation. Unfortunately, mediation was unsuccessful and the matter proceeded to a full hearing.

[11] As appears from the oral and affidavit evidence the following matters were not in dispute between the parties:

(a) The Graham family has farmed in County Fermanagh for generations. The plaintiff's father purchased The Graan in 1937. This farm included the lands at Cavanakeery, Cleggan and Moneyourgan.

(b) The plaintiff was born on 29 October 1928 and began to work on his father's farm from his youth.

(c) He and his brother Douglas inherited the farm on their father's death and they worked together on the farm. Together they expanded the farming enterprise by purchasing additional lands.

(d) In or around 1966 the plaintiff and his brother decided to farm separately and they divided the lands between themselves on an amicable basis.

(e) The plaintiff retained the farm at The Graan and he and his wife Beryl lived in the farmhouse. Later the plaintiff expanded this farm by purchasing additional lands at Drumboory. The plaintiff worked as both a dairy and beef farmer. In total the plaintiff and his late wife became the registered joint owners of approximately 292 acres.

(f) The plaintiff and his late wife had eight children, seven daughters and one son, Matthew the first named defendant. The family lived and worked on the farm.

(g) All of the plaintiff's daughters completed third level education and each moved away from the family home.

(h) The first-named defendant attended Portora Royal School, Enniskillen. After completing his GCSEs he went to Greenmount Agricultural College where he completed a 3 year degree. After completing his degree he returned home in 1993 and farmed the lands in conjunction with his father. The first-named defendant later inherited lands at Blaney from his uncle.

(i) The plaintiff signed over the milk quota and 40 dairy cows to the first-named defendant in 1993/94. The plaintiff opened a bank account for the first-named defendant and the first-named defendant was allowed to retain the milk cheques. The plaintiff continued to farm the beef and suckler herd.

(j) In 1995/96 the first-named defendant purchased additional milk quota and built a new shed to house the dairy herd. This project was financed by way of a grant and an Ulster Bank loan which the plaintiff guaranteed.

(k) In 1998 the first-named defendant and his fiancée Karen, the second-named defendant purchased a house in Enniskillen. After they married in 2000 the first-named defendant and his wife moved into the family farmhouse at The Graan at the invitation of the plaintiff and his late wife who at that stage moved to live in the new bungalow a short distance away.

(l) The plaintiff and first-named defendant continued to farm together. In 2004 a new milking parlour was built at a cost of £137,000. In addition renovations were carried out to the family home in or around 2005. All of these works were financed by way of Ulster Bank loans.

(m) In or around 2005 Nixon Hall Estate which consisted of 292 acres came onto the market for sale. The first-named defendant was interested in purchasing this land and the plaintiff was excited about this prospect. Nixon Hall was eventually purchased in the name of Nixon Hall Estate Limited. This is a company of which the first and second-named defendants are the sole directors and shareholders. Nixon Hall was purchased for the sum of £1.35M. The company obtained a loan in this amount from the Ulster Bank. In addition the first-named defendant obtained an overdraft of £895,000 which was used to cover the following expenses:

(i) his existing Ulster Bank loans totalling £163,000;

(ii) the costs of purchasing additional animals, milk quota and carrying out works of construction in particular new farm buildings; and

(iii) legal costs.

In total the borrowings amounted to £2,245,000.

(n) The Ulster Bank loan was secured, in part by a personal guarantee provided by the plaintiff and his wife on 7 May 2004 in the sum of £1.2 M.

(o) In July 2007 the first-named defendant refinanced his debt with the Northern Bank. The company obtained a £1.6M loan. In addition a £1M overdraft facility was granted to the first-named defendant which was secured on: the Nixon Hall lands; the lands at Blaney; and by way of a personal guarantee executed by the plaintiff and his wife on 27 July 2007 in the sum of £1M.

(p) In or around 2008 the first-named defendant purchased milking robots at a cost £50,000. These were never installed and were eventually repossessed.

(q) Nixon Hall Estate was sold in 2010 for £1.75M. The Northern Bank loan to the company of £1.6M was repaid leaving £1M due and owing.

(r) In or around 2011 in accordance with a facility letter dated 27 October 2011 the Ulster Bank provided further overdraft facilities in the sum of approximately £422,000. The facility letter bore the signature of the plaintiff and his wife. The plaintiff and his wife deny that they signed this facility and aver that it is a forgery. The matter has been reported to the PSNI who engaged Mr Craythorne, a handwriting expert. Detective Constable Waterson gave evidence that signatures on the Ulster Bank facility letter were examined by Dr Craythorne who advised that they were forgeries. He could not say who had forged the signatures. She further gave evidence that both defendants were interviewed and made 'no comment' interviews. The file has now been forwarded to the PPS.

(s) On 30 November 2011 the defendants applied for planning permission for an anaerobic digester and planning permission was granted on 23 November 2012.

(t) In December 2012 Northern Bank demanded repayment as there had been default in the repayments when due and owing. They repossessed and sold the lands which Matthew had inherited at Blaney for £275,000. They then issued proceedings against the plaintiff and his wife on foot of the guarantee seeking recovery of £1M.

(u) In December 2013 the plaintiff disclosed to his daughters that the Northern Bank had issued proceedings and were seeking to repossess the farm. As a result a meeting was arranged with the solicitor on 29 December 2013 which was attended by the plaintiff, his wife, some of his daughters and the first-named defendant.

(v) On 20 February 2014 the plaintiff entered into a settlement with Northern Bank whereby he repaid £917,000 which was raised by way of sale of the lands at Drumboory, Cavanakeery and his house at Rossnowlagh which he sold to his daughter Sheryl Coyle.

(w) As a result of the Northern Bank proceedings there has been a breakdown in relations between the plaintiff and first-named defendant which has led to allegations and counter-allegations.

(x) By 2014 the first-named defendant had sold most of his dairy herd.

(y) In August 2014 Corr Consulting approached the plaintiff to sell or lease the lands to them so that an anaerobic digester could be installed. The plaintiff refused to do so.

(z) Relations between the plaintiff and first-named defendant continued to deteriorate and in March 2015 the plaintiff sent a solicitor's letter to his son requiring him not to farm the lands at Cleggan and Moneyourgan.

(aa) On 23 September 2015 the first-named defendant sent a letter to his father saying that he had had "his day" and told him to transfer The Graan to him.

(bb) In or around 2015 the first-named defendant's cattle contracted TB and on 27 November 2015 he was paid compensation for TB. Thereafter, he did not restock his herd.

(cc) The plaintiff's wife Beryl died and the first-named defendant did not attend the funeral.

(dd) In 2017 the plaintiff formed the view that the first-named defendant was not farming, that he was neglecting the farm and renting it out to third parties. As a result the plaintiff decided to rent out the farm to a third party. When the defendant learned of this he spread slurry on the lands which led to an application for an injunction. An *ex parte* injunction was granted by Colton J on 13 April 2017. The defendants agreed that this injunction remain in place until the conclusion of the present proceedings.

(ee) A Mareva injunction was sought in April 2018 to restrain the defendant from selling farm machinery. The first-named defendant consented to this order in May 2018. A committal application was made in October 2018 relating to the defendant allegedly blocking the plaintiff's tenant from using the farm silo pit and sheds. The first-named defendant agreed to remove machinery from the silo pit and only to use sheds as permitted by the plaintiff.

(ff) In April 2015 Ulster Bank wrote to the plaintiff and his wife demanding repayment of £420,000 plus interest in respect of loans taken out in 2004-2005. In September 2015 the Ulster Bank issued proceedings against the plaintiff and his wife seeking a declaration that the sum of £420,000 was well charged on lands owned by the plaintiff and his wife on foot of a guarantee dated 27 July 2007 in respect of monies advanced in accordance with the facility letter dated 27 October 2011. These proceedings are ongoing. The Ulster Bank has now obtained a money judgment against both the first and second-named defendant as of 23 March 2019 for the sum of £550,924.30.

Issues in dispute

[12] The plaintiff is the registered owner of the lands and he seeks a declaration that he owns the entire legal and beneficial interest in them. The first-named defendant counter-claims that he is entitled to have the lands vested in him absolutely on the basis of proprietary estoppel.

[13] The central question is whether the defendant can establish an interest in the lands on the basis of proprietary estoppel and if so, what relief, if any, the court should grant.

Relevant legal principles in respect of Proprietary Estoppel

[14] The legal propositions upon which a proprietary estoppel claim is established were conveniently summarised by Lewison J in *Davies & Anor v Davies* [2016] EWCA Civ 463 at paragraph [38] as follows:

> "(i) Deciding whether an equity has been raised and, if so, how to satisfy it is a retrospective exercise looking backwards from the moment when the promise falls due to be performed and asking whether, in the circumstances which have actually happened, it would be unconscionable for a promise not to be kept either wholly or in part: *Thorner v Major* [2009] UKHL 18, [2009] 1 WLR 776 at [57] and [101].
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> (ii) The ingredients necessary to raise an equity are (a) an assurance of sufficient clarity (b) reliance by the claimant on that assurance and (c) detriment to the claimant in consequence of his reasonable reliance: *Thorner v Major* at [29].
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> (iii) However, no claim based on proprietary estoppel can be divided into watertight compartments. The quality of the relevant assurances may influence the issue of reliance; reliance and detriment are often intertwined, and whether there is a distinct need for a `mutual understanding' may depend on how the other elements are formulated and understood: *Gillett v Holt* [2001] Ch 210 at 225.
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> (iv) Detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances: *Gillett v Holt* at 232; *Henry v Henry* [2010] PC3 at [38].
>
> (v) There must be a sufficient causal link between the assurance relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. The question is whether (and if so to what extent) it would be unjust or inequitable to allow the person who has given the assurance to go back on it. The essential test is that of unconscionability: *Gillett v Holt* at 232.

(vi) Thus the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result: *Jennings v Rice* [2002] EWCA Civ 159.

(vii) In deciding how to satisfy any equity the court must weigh the detriment suffered by the claimant in reliance on the defendant's assurances against any countervailing benefits he enjoyed in consequence of that reliance: *Henry v Henry* at [51] and [53].

(viii) Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application: *Henry v Henry* at [65]. In particular there must be a proportionality between the remedy and the detriment which is its purpose to avoid: *Jennings v Rice* at [28] (citing from earlier cases) and [56]. This does not mean that the court should abandon expectations and seek only to compensate detrimental reliance, but if the expectation is disproportionate to the detriment, the court should satisfy the equity in a more limited way: *Jennings v Rice* at [50] and [51].

(ix) In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion: *Jennings v Rice* at [51]. However, the discretion is not unfettered. It must be exercised on a principled basis, and does not entail what HH Judge Weekes QC memorably called a `portable palm tree': *Taylor v Dickens* [1998] 1 FLR 806 (a decision criticised for other reasons in *Gillett v Holt*)."

[15] As was noted in *HSBC v Robinson* [2017] NICh 7 at paragraph [20], "the driving force behind equitable estoppel remains the disapproval of unconscionable behaviour". Thus, whilst the court in determining whether proprietary estoppel is established considers the three elements of representation, reliance and detriment, it does so, "in the round" to determine the question whether, in all the circumstances it would be unconscionable for the promisor to now resile from his promise or the representations or assurances given by him.

[16] Similarly in determining what relief, if any, should be granted the aim of the court is to avoid an unconscionable outcome. Thus, the court has to exercise a broad judicial discretion to make such orders as are necessary to achieve a just outcome. In some circumstances this will amount to an award of compensation. In others it may amount to granting a lease or licence and in yet other cases it may require the transfer of land or property absolutely.

[17] Whilst the court's discretion is broad it is not unfettered and must be exercised on a principled basis. In *Davies* Lewison LJ at paragraph [39] referred to the "lively controversy" about the essential aim of this broad judicial discretion. He stated as follows:

> "[39] There is a lively controversy about the essential aim of the exercise of this broad judgmental discretion. One line of authority takes the view that the essential aim of the discretion is to give effect to the claimant's expectation unless it would be disproportionate to do so. The other takes the view that essential aim of the discretion is to ensure that the claimant's reliance interest is protected, so that she is compensated for such detriment as she has suffered. The two approaches, in their starkest form, are fundamentally different. Much scholarly opinion favours the second approach: see Snell's Equity (33rd ed) para 12-048; … Others argue that the outcome will reflect both the expectation and the reliance interest and that it will normally be somewhere between the two: Gardner: [2006] LQR 492. Logically, there is much to be said for the second approach. Since the essence of proprietary estoppel is the combination of expectation and detriment, if either is absent the claim must fail. If, therefore, the detriment can be fairly quantified and a claimant receives full compensation for that detriment, that compensation ought, in principle, to remove the foundation of the claim: Robertson: [2008] Conv 295. Fortunately, I do not think that we are required to resolve this controversy on this appeal."

[18] Unfortunately, in *Davies* the court did not resolve this controversy. In my view the task of the court in granting a remedy is not simply to either grant the expectation or to compensate for detrimental reliance as I consider each of these approaches can lead to unfair outcomes. The aim, I consider, in all cases is not to give effect to either expectation or detriment but to make such order or orders as are required to produce a just and fair result. In some cases, where the expectation is clear and the conditions for granting the expectation are fulfilled then only granting the expectation will produce a fair outcome. In other cases where the expectation is uncertain or is out of all proportion to the detriment suffered or where the conditions for the expectation have not been met, compensation may be sufficient to produce a fair outcome. In most cases however what is fair will be somewhere in the middle between expectation and detriment. As was noted in *Jennings v Rice* at paragraph [52]:

> "It would be unwise to attempt any comprehensive enumeration of the factors relevant to the exercise of the

> court's discretion, or to suggest any hierarchy of factors. In my view they include, but are not limited to the factors mentioned in Dr Gardner's third hypothesis (misconduct of the claimant as in *J Willis & Sons v Willis* [1979] Chancery 261 or particularly oppressive conduct on the part of the defendant, as in *Crab v Arun District Council* or *Pascoe v Turner* [1979] 1 WLR 431). To these can safely be added the court's recognition that it cannot compel people who have fallen out to live peaceably together, so that there may be a need for a clean break; alterations in the benefactors assets and circumstances, especially where the benefactor's assurances have been given, and the claimant's detriment has been suffered, over a long period of years; the likely effect of taxation; and (to a limited degree) the others claims (legal or moral) on the benefactor or his or her estate. No doubt there are many other factors which it may be right for the court to take into account in particular factual situations."

[19] In determining what relief should be granted I consider that the court should have regard to, *inter alia*, the following factors:-

(a) What was promised or what was the expectation?

(b) What conditions were attached to the promise?

(c) Were the conditions fulfilled in full or in part or to what extent where they fulfilled?

(d) What detriment has the claimant suffered – past, present and future?

(e) Have circumstances changed for the promisor or the claimant since the time of the promise which would have an effect on what is now a just outcome – See *Uglow v Uglow* [2004] EWCA Civ 987?

(f) What benefits has the claimant obtained as the result of his or her reliance on the promise?

(g) Has there been any misconduct by the claimant or any oppressive conduct or misconduct by the promisor?

(h) Is there a need for a clean break?

(i) Are there any tax implication with regard to the proposed terms of relief?

(j) Are there others who have a claim on the estate?

[20] This court recognises that whilst it has a wide judgmental discretion, the overarching requirement is to achieve an outcome which is fair or in other words to avoid an outcome which is unconscionable. Each case will obviously be fact specific. As noted in *Jennings v Rice* at paragraph [44]:

> "The need to search for the right principles cannot be avoided. But it is unlikely to be a shorter simple search, because (as appears from both the English and the Australian authorities) proprietary estoppel can apply in a wide variety of factual situations, and any summary formula is likely to prove to be an oversimplification. The cases show a wide range of variation in both of the main elements, that is the quality of the assurances which give rise to the claimant's expectation and the extent of the claimant's detrimental reliance on the assurance. The doctrine applies only if these elements, in combination, make it unconscionable for the person given the assurances (whom I will call the benefactor although that may not be always be an appropriate label) to go back on them."

Summary of the first-named defendant's evidence in support of the proprietary estoppel claim

[21] The first-named defendant adopted the contents of his affidavit evidence sworn on 4 May 2017 and 1 June 2017. In addition he gave oral evidence. Matthew stated that he was married to Karen, the second-named defendant. They have three children aged between 12 and 16 years. His wife has recently been diagnosed with Multiple Sclerosis.

[22] Matthew stated that he was born on 27 March 1974. He is the plaintiff's only son and has seven sisters. He passed his 11 plus and went to Portora Royal School, Enniskillen. Whilst at school he helped on the farm in the evenings and at weekends and also took time off school to help with farming activities including bringing in the silage. He said that he was interested in farming but also enjoyed maths and had thought about doing accountancy. He considered however that his mother's and father's expectation was that he would come home and farm the lands. There was a history of farming in the Graham family. When his grandfather died his father was 29 years old and he and his brother inherited the family farm and farmed it together for a number of years. Matthew recalled that his father told him that he wanted him to be the third generation of Graham farmers.

[23] Due his parents' expectation that he would become a farmer he said he did not pay attention to his lessons at school. He was encouraged by his parents to leave school after his GCSE examinations. He did so and then went to Greenmount

Agricultural College where he obtained a degree in agriculture so that he could fulfil his parents' expectation that he would return home to the farm. He stated that his father frequently assured him that he would inherit the entire farm.

[24] After he returned from his studies at Greenmount he started working on the farm with his father on a full-time basis. Initially, in 1993/94 his father signed over the milk quota and dairy cows to him and let him keep the milk cheques. His father, now aged 65 years of aged, continued to look after the beef and suckler herd and retained the profits from this.

[25] Over the years he stated that he set about expanding and improving the farming enterprise by acquiring additional milk quota, introducing pedigree Holstein cows and increasing the herd numbers. He also built a new shed and a milking parlour. He said his father was happy with these building projects and agreed to act as guarantor in respect of the various loans needed to pay for these purchases and projects.

[26] In or around 1998 he and his fiancée Karen purchased a home in Enniskillen. When he married Karen in 2000 this home was sold as his parents had moved out to the retirement bungalow and encouraged him and his new wife to move into the farmhouse at The Graan.

[27] He said that thereafter he continued to expand the farm and built a new milking parlour at a cost of £130,000 approximately. He also built a new cattle shed. In addition he carried out renovations and extension work to the farmhouse at The Graan at a cost of approximately £56,000. He said that all of this work was done with the support and encouragement of his father and mother who throughout this time referred to the farm as "Matthew's farm". He said his father also frequently told him "this is your farm" "all this is yours".

[28] On the strength of these promises, the first-named defendant stated he acted as he did in leaving school early and in not pursuing an alternative career and in selling his house in Enniskillen and in choosing a career as a farmer.

[29] In or around 2004 Nixon Hall Estate comprising 292 acres came on the market for sale. The first-named defendant said his father was excited when he expressed an interest in buying this farm. To enable him to purchase it he needed to borrow from the bank. In the event Nixon Hall was purchased in the name of Nixon Hall Estates Limited of which he and his wife Karen where the sole directors and shareholders. The Ulster Bank provided the loan to the company of the purchase price of £1.35M. In addition Ulster Bank advanced £895,000 to the first-named defendant by way of an overdraft facility. He stated that he used these monies to cover existing Ulster Bank loans totally £163,000 and to cover the costs of purchasing more animals, milk quota, paying for the construction of the new milking parlour and legal costs. In total the borrowings amounted to £2.245M. The security for the

loans included his lands at Blaney and also a guarantee provided by his mother and father in the sum of £1.2M.

[30] The first-named defendant stated that although he increased the herd and the farming enterprise he struggled to service the repayments on the loan. As a result there was default in repayments and interest accrued. To deal with this he started to look for other ways to pay off the loan. He applied for planning permission for sites on his lands at Blaney and also Nixon Hall Estate. Whilst he was successful in achieving planning permission he was unable to sell the sites due to a slump in the property market and therefore this scheme proved unsuccessful in paying off the debt due.

[31] By 2006/2007 he was under pressure from the Ulster Bank and so he refinanced the debt with Northern Bank in 2007. He took out a loan in his own name for £1M and also a loan in the name of the company for £1.6M. He stated that Ulster Bank was paid off save for a figure of approximately £300,000.

[32] Nixon Hall was sold in 2010 for £1.75M. He stated that he used these proceeds to repay the £1.6M loan to Nixon Hall Estates Limited. This effectively left £1M due and owing to the Northern Bank.

[33] During 2010/2012 the Northern Bank was putting pressure on him to repay the debt. Matthew said his father was well aware that the Northern Bank was demanding repayment and threatening legal proceedings. Matthew stated he discussed it with his father but his father simply left it to him to sort it out.

[34] To try and deal with the problem Matthew said he then tried various schemes including attempts to sell part of his father's land to a local quarry. He also applied for planning permission for an anaerobic digester. Unfortunately, he stated he could not proceed with either of these plans to reduce the debt as his parents refused to cooperate.

[35] In or around December 2013 he stated he was asked to go to a meeting at the solicitor's office. He stated that his sister Juliet, his father and others were present. He indicated that he put forward proposals to sort out the debt which included refinancing with Bank of Ireland and also getting the anaerobic digester installed. He stated that his sister berated him at the meeting and refused to listen to his proposals, so he left the meeting.

[36] Thereafter he stated relations with his parents became very strained. He stated that his father told him he was going to "put him to the road". Subsequently his father by way of a solicitor's letter informed him that he was not allowed to use the lands and ultimately brought injunction proceedings against him.

[37] Matthew stated that the relationship deteriorated to the extent that he did not go to his own mother's funeral. He said he was so stressed he decided it would be

better to go on holidays. Initially he said this was on the basis of solicitor's advice but later in his evidence he stated that it was because his wife had just been diagnosed with multiple sclerosis.

[38] In cross-examination Matthew denied that he had mismanaged money. He said that the losses arose because he was trying to maintain two households and pay all the bills. He stated that circumstances conspired against him especially as there was a slump in the property and in addition he had a TB outbreak which decimated his herd.

[39] He denied that he was not an active farmer or that he had neglected the farm. He said that he had had an active herd in 2014 when the herd contracted TB. He said he did not restock after the TB outbreak because his father had by that time indicated to him that he was not allowed to use the land. He further stated that he tried to continue farming and grew silage. He denied that he had let the lands fall into disrepair and denied that the sheds were empty.

[40] Matthew also denied that he led an extravagant lifestyle although he accepted that he had had several holidays to France and that he and his wife owned a BMW and a Mercedes and each car had personalised number plates. He stated that he used the costs of selling farm machinery to pay debts, legal fees and the costs of applying for planning permission.

[41] In particular he denied that he had misused the borrowings from the Northern Bank and Ulster Bank in any way. In relation to questions about whether he had forged his parents' signature on the Ulster Bank facility letter he exercised his right not to incriminate himself.

[42] He accepted that his father and sisters had paid off the £1M debt to the Northern Bank. He stated that he had tried to deal with this debt but his sisters would not listen to him and excluded him from the discussions.

[43] He accepted that he had sent a letter to his father telling him that he had "had his day". He refused to acknowledge that he had made any mistakes or that there was any wrongdoing on his part

Summary of the evidence on behalf of the plaintiff regarding proprietary estoppel

Ernest Graham

[44] Mr Ernest Graham, due to ill health gave evidence on commission. The court had the benefit of the transcript and a CD hearing of this evidence. In addition the plaintiff gave evidence by way of affidavits sworn on 12 April 2017 and 22 May 2017 which related to the injunction application. After he had given evidence on commission he filed a further affidavit dated 5 April 2018.

[45] The plaintiff gave evidence that the family had farmed The Graan since 1937 when his father had purchased it. After his father's death he and his brother farmed the land together until they amicably divided the lands in or around 1966. At that time Mr Graham married his late wife Beryl and she and he lived in the farmhouse at The Graan and retained the farm at The Graan which included lands at Cleggan and Moneyourgan. Later he purchased 70 acres at Drumboory.

[46] The plaintiff and his wife had eight children including Matthew his only son. He said that when they were young all of the children helped out on the farm. His daughters all did well at school and went on to complete third level education and each had moved away from the family home.

[47] After Matthew completed his GCSEs he left Portora Royal School and went to Greenmount Agricultural College. The plaintiff accepted that he had encouraged Matthew to farm. When Matthew returned home the plaintiff said that he transferred the milk quota and the milking cows to him and let Matthew keep the milk cheques. The plaintiff stated that he wanted Matthew to take over responsibility for the dairy herd whilst he would continue to be responsible for the beef and suckler herd.

[48] The plaintiff said that Matthew expanded the herd, purchased additional milk quota and built a new shed and milking parlour. He was happy to assist and acted as guarantor to the various loans taken out.

[49] When Matthew married Karen, he stated that it was the logical thing to encourage them to move into the family farmhouse. He stated that Matthew and his wife sold the home they had purchased in Enniskillen and moved into the farmhouse whilst he and his wife Beryl moved out into the newly built retirement bungalow.

[50] The plaintiff did not object when Matthew carried out various works of repair and renovation to the farmhouse and he said these were decisions Matthew could make.

[51] Later in 2005 when Matthew advised that he wanted to buy Nixon Hall Estate the plaintiff said he was happy that his son wanted to purchase this farm. To assist Matthew in this endeavour he and his wife agreed to act as guarantors to the loans required to purchase the lands. He accepted that he left it to Matthew to deal with the bank. At this stage the plaintiff was in his 70s and he said that he and his wife simply attended at the solicitor's office and signed the appropriate paperwork which included the guarantee.

[52] In 2007 when the loans were refinanced by the Northern Bank the plaintiff again was content to sign a new guarantee after he had taken the necessary legal advice. At that stage the plaintiff stated that he understood that the Ulster Bank guarantee would be extinguished because it would be repaid by the Northern Bank

loan. He said that this is what Matthew had told him. He accepted however that he did not get too involved in the detail and generally left all financial matters to Matthew to sort out.

[53] He and Matthew continued to farm the lands together for many years. He accepted that over time due to his increasing age Matthew did the majority of the farming.

[54] In December 2009 when the Northern Bank sent a demand for repayment of the loan, the plaintiff accepted that Matthew could have told him about this but he did not get involved as he was content for Matthew to sort out all the financial matters.

[55] In May 2012 the plaintiff made a Will in which, *inter alia,* he devised is holiday home at Rossnowlagh and the proceeds of an insurance policy to his daughters and left the entire farm to Matthew. The plaintiff stated that at that time he enjoyed a very good relationship with Matthew and this relationship only went wrong when he got "that bill" from Northern Bank. "That bill" referred to the Northern Bank proceedings which were issued in December 2012 and in which the bank sought possession of the lands due to default in payment of the loan.

[56] The plaintiff said that he only became aware of the Northern Bank's claim in December 2013. At that stage he became very distressed and upset and decided to speak to his wife and daughters about it. As a result a meeting was arranged at the solicitor's office. He stated that Matthew stormed out of this meeting saying that he was going to borrow money from the Bank of Ireland to settle the debt. The family did not agree with this approach as they wanted to find a realistic way to pay the debt and also to protect the farm. He further stated that Matthew did not put forward realistic proposals to deal with the bank debt. As a result he and his daughters were left to work out a scheme to repay the £1M debt to the Northern Bank. To repay this debt he had to sell his lands at Drumboory and Cavanakeery and in addition his daughter Sheryl, at great personal sacrifice bought his holiday home at Rossnowlagh.

[57] After the meeting at the solicitor's office relations between the plaintiff and Matthew deteriorated. He stated that Matthew became aggressive and sent him a letter in which he stated that he had "had his day" and should hand over the lands to him and should not have capitulated to the bank. The plaintiff was very upset by this letter.

[58] The plaintiff expressed great unhappiness about Matthew's failure to deal with the debt. He was concerned that Matthew's only proposal to deal with the debt was to incur more debt and to install an anaerobic digester rather than seeking to farm the lands.

[59] After he repaid the debt the plaintiff said that he and Matthew had limited contact. In August 2004 he visited the farm and was very shocked to see the state it was in. He stated that it was very run down, the outhouses were in disrepair and the fields were in a terrible condition with a lack of fencing and rushes not being controlled. This led to fines being imposed by the Department of Agriculture. He further stated that he had learnt that Matthew had reduced his herd and by November 2015 as a result of an outbreak of TB Matthew had no animals. He later became concerned and disappointed that Matthew had failed to restock.

[60] After this the plaintiff stated that he was approached by Corr Consulting who asked him to sign over the farm to allow an anaerobic digester to be installed. The plaintiff stated that he was very upset that Matthew had obtained planning permission for a bio digester without his permission, had represented in the planning application that he was the owner of the lands and had encouraged men to come to his home asking him to sign over the farm so that the bio digester could be installed.

[61] At that time he formed the view that Matthew had no real interest in active farming and was simply trying to make money by other means namely property development and the installation of a bio digester. He was concerned that Matthew had not realistically addressed the debt and was continuing to put forward "hair brained" [*sic*] schemes which he considered were endangering the very existence of the farm. As a result he decided to change his Will. He was satisfied that Matthew would not and could not continue the farming tradition. He believed Matthew was really a gentleman farmer who preferred participating in schemes rather than actually carrying out hard work on the farm and if this continued then ultimately the whole farm would be lost.

[62] At this stage the plaintiff realised that he would have to ensure he received an income from the farm. To this end he asked his solicitor to send a letter to Matthew to stop him farming the lands at Cleggan and Moneyourgan. This was to enable the plaintiff to rent out these lands and thereby get an income to live on. Later when he learnt that Matthew had completely stopped farming and was simply renting out the lands and the outhouses at The Graan he wrote to him telling him that he did not have permission to do this. The plaintiff's view was that Matthew was only to get the lands if he farmed them. As he was no longer farming the lands the plaintiff decided that he would let out the lands himself and take the profits. When the plaintiff attempted to rent the lands out he was unable to do so because Matthew prevented this by spreading slurry on the land. As a result the plaintiff had to seek injunctive relief.

[63] Relations at that stage between Matthew and his father became very poor. The plaintiff stated that Matthew behaved aggressively towards him and as a result he was frightened. Later he stated that he was very upset when Matthew decided to go on holiday rather than to attend Beryl's funeral.

[64] After he obtained discovery the plaintiff stated that this was the first time he discovered Matthew had misused the borrowings. He stated that Matthew had not suffered any detriment as a result of any promises made to him because he had the benefit of: income from the farm for many years; free accommodation; single farm payments of £162,000 in the period 2014-2016; £116,000 sale proceeds from the sale of cattle; sale proceeds of machinery; and the benefit of approximately £1M which the plaintiff and his daughters had to repay. In addition the plaintiff stated that as a result of Matthew's behaviour he was now facing a claim from the Ulster Bank. The Ulster Bank claim related to a facility granted by way of a facility letter dated 2011. The plaintiff stated that the signatures on this letter were forged and as a result he had reported this matter to the police. The Ulster Bank sought repayment of these monies from the plaintiff on the basis of the original guarantee signed by him in 2004. He further advised the court that the Ulster Bank was continuing to pursue him for £0.5M. He stated that Matthew had had the benefit of this money.

[65] The plaintiff stated that if Matthew had continued the farming tradition he would have inherited the land. When however he saw Matthew's "litany of failures" which led to debt and the recklessness exhibited by Matthew in the face of mounting debt together with the continuation of his luxurious lifestyle he realised that the farm was going to be lost. When it became clear to the plaintiff that Matthew was no longer farming the lands and was simply using the lands for projects other than farming he decided to change his will so that Matthew would not inherit the entire lands and he also decided to rent out the lands himself and take the profits.

Other evidence on behalf of the plaintiff regarding the proprietary estoppel claim

[66] The other evidence on behalf of the plaintiff consisted of evidence by his three daughters, Emma Balfour, Juliet Coulter and Sheryl Coyle. In addition expert evidence was given by Ms Devlin, Chartered Accountant.

Juliet Coulter

[67] Juliet Coulter gave evidence that she was the daughter of the plaintiff and a sister of the first-named defendant. She was employed as a Principal Environmental Officer and worked in Ballymena. She had left home in 1989/90. She did however continue to visit the home especially at weekends.

[68] She recalled that Matthew was not keen on academia and had left school with few qualifications. She stated that as a teenager it was her view that he had no real interest in farming and she remembered her father saying that he wanted to give the farm to someone who would carry on farming and he thought Matthew was lazy.

[69] She was however unable to give any evidence about events after she left home save what happened in December 2013 and thereafter. In December 2013 she stated that she was at her parents' home when her father became distraught and told her that the bank was going to take the farm in 6 weeks. She had no idea what this

was about and so she arranged a meeting with the family solicitor which took place after Christmas. This meeting was attended by her, her parents, her sisters Emma and Hester and also her brother Matthew. The solicitor advised that the bank was owed £1M. When Matthew said he had a plan and would borrow money from the Bank of Ireland she told him "this is ridiculous". At that stage Matthew stormed out. She advised the court that the solicitor advised that the Ulster Bank was also seeking repayment of monies but his view was that this was a fishing expedition.

[70] She stated that it was agreed by her father and her sisters that the lands at Drumboory and Cleggan would be sold and in addition her sister Sheryl would purchase the home at Rossnowlagh to settle the Northern Bank debt. She stated that Matthew made no contribution and refused to deal realistically with the debt.

[71] Sometime later her father phoned her stating that two men had called asking him to sign over the farm so that a bio digester could be installed. At his request she contacted these people and asked them not to contact her father again.

[72] In 2015 her father phoned her in a distressed state regarding a letter he had received from the Ulster Bank which referred to an earlier letter apparently signed by him in which he had proposed to sell his land. Her father advised her that had never signed this letter. He also showed her a letter from the Department of Agriculture in respect of neglect of the lands. In addition she recalled that her father was very distraught when Matthew did not attend their mother's funeral.

[73] This witness also advised that she had instructed an accountant to see how the monies which had been borrowed from the Northern Bank had been expended. It was her belief on the basis of discovered material that Matthew had spent over £1M personally on a high lifestyle and had left the rest of the family to repay this debt.

Emma Balfour

[74] Emma Balfour, another sister gave evidence that she left home in 1985 but stated that she returned home approximately 2 to 3 times per week to visit her parents.

[75] She gave similar evidence to Juliet about events in December 2013 when she learnt about the Northern Bank debt and confirmed that she was one of the persons who attended at the meeting in the solicitor's office.

[76] She then recalled that in April 2014 she took her dad down to the farm and they both noted that it was in a state of disrepair with fences broken, slurry tanks overflowing. They were unable to see any animals about the farmyard or in the fields. She recalls stopping her car to speak to Matthew and she heard her dad plead with him to pay the debts and to start farming. In reply Matthew said "Sign over to

me or nothing to talk about". She stated that her father was very upset as a result of this comment.

[77] In mid-2014 she recalls being at her parents' home when two men called looking for her father to sign over the farm so that a biodigester could be installed. He refused to do so.

[78] When the Ulster Bank proceedings were issued she instructed Mr Craythorne to examine the signatures as her father said they were forged.

Sheryl Coyle

[79] Sheryl Coyle, another sister, gave evidence. She said Matthew was not keen on farming and when they were younger her dad had said "If you are not going to farm I'll leave the whole bloody lot to Emma".

[80] Prior to December 2013 she accepted she was unaware of any financial difficulties. When she became aware of the problems she agreed to purchase the house at Rossnowlagh. This was a great personal sacrifice for her as she had to put her very young children into child care and she had to find a job to pay the mortgage. She gave evidence that she even had to sell her wedding presents to finance the purchase.

[81] Sheryl now lives beside her father in Rossnowlagh and provides care for him.

[82] It was her evidence that Matthew was not a farmer. She stated he started projects which he never finished and she gave the example of him buying robots which he never installed and also stated that he had purchased steel for a shed which he never built.

Expert evidence

[83] Ms Anna Devlin, chartered accountant, prepared a report dated 12 November 2018 and she also gave evidence about her review of the financial statements of Nixon Hall Estates Limited. She stated that she was asked to identify and understand how the borrowings from Ulster Bank and Northern Ireland Bank had been expended. During her evidence she identified a number of withdrawals to other accounts but she stated that as the bank statements had not been provided by Matthew she was unable to do a proper paper trail. In the middle of her evidence these statements were then provided. At the direction of the court Ms Devlin and Mr Kevin Byrne, chartered accountant, instructed by the defendants were directed to meet and prepare a joint minute. A joint meeting took place on 16 December 2018 and a minute was prepared. As a result of the agreed minute Ms Devlin was not recalled and it was unnecessary for Mr Byrne to be called to give evidence.

[84] The agreed position between the accountants was that the various withdrawals could all be reconciled with other accounts. In real terms the accountants agreed that all the bank loans were repaid save the £1M to Northern Bank and that approximately £0.5M was due to the Ulster Bank. It was accepted that the plaintiff had paid the £1M Northern Bank debt and that he was potentially liable to pay a further £0.5M to the Ulster Bank.

Submissions made by the plaintiff

[85] The plaintiff accepted that assurances had been given that Matthew would inherit the farm but it was submitted that this assurance was conditional on Matthew being an active farmer. The plaintiff submitted that he had failed to abide by this condition. It was submitted that in 2014 and thereafter Matthew ceased to farm the land. He had sold his herd and thereafter did not farm in any meaningful way. Rather he attempted to use the farm for non-farming projects such as building sites and installation of a bio digester. In all these circumstances it was submitted that no estoppel arose as the condition to the promise was not fulfilled. In the alternative it was submitted that in all the circumstances it would not be unconscionable for the plaintiff to change his mind and therefore no estoppel arose.

[86] If contrary to this that the court found that an estoppel did arise the plaintiff submitted that no relief should be granted because there was no detriment to the defendants. The plaintiff submitted that the first-named defendant sustained no monetary detriment. All expenditure by the defendants including purchase of stock, building sheds and works of repair were paid for by way of bank loans which were ultimately rolled into the Northern Bank loan which was repaid by the plaintiff. Further, the plaintiff had for many years the benefit of a good income and rent free accommodation. In such circumstances it was submitted that there was no detriment sustained by the defendant.

[87] Further, the plaintiff submitted that in the exercise of its discretion the court should take into account litigation misconduct and misconduct by the defendant. In particular it was submitted that due to Matthew's failure to provide bank statements and other discovery the plaintiff had to expend money instructing an accountant. This could have been avoided if the discovery had been provided in accordance with the court orders for discovery. The plaintiff further submitted that Matthew had behaved very badly in failing to deal with the debt and at the time when the property was due to be repossessed he continued to live a lavish lifestyle and retained monies for himself from the sale of the animals, the single farm payments, TB compensation monies and sale proceeds of machinery, rather than using these monies to repay the debts. Further, it was submitted that Matthew wasted money in applying for planning permission for a bio digester and wasted money in purchasing robots which were never used. It was further submitted that his personal conduct towards his father and in particular the way in which he spoke to him and his failure to attend his mother's funeral were matters which the court should take into account.

[88] Notwithstanding the plaintiff's case that no estoppel arose or if it did arise no remedy was required because Matthew had already received sufficient benefits, the plaintiff did make an open offer to the plaintiff whereby the plaintiff proposed to pay £150,000 to the defendants in full and final settlement of this action. In return for this the defendants were to give up possession of the farmhouse and the farm and to acknowledge the plaintiff's title to all the lands and further to agree that no challenge would be made to the plaintiff's Will.

Defendant's case

[89] The defendant submitted that this was a clear cut case of proprietary estoppel. He submitted that assurances had been given and promises made that he would inherit the entire farm. In reliance on this he had chosen to become a farmer and had otherwise acted to his detriment by the expenditure of money on the farm and farmhouse. He accepted that the equity would be satisfied somewhere between his expectation and the detriment. He advised the court that he believed the appropriate compensation due to him would be a transfer of the Grann farmhouse and farm. He indicated that he was not seeking the lands at Cleggan and Moneyourgan.

[90] He denied that the promise made to him was conditional on him being an active farmer. He further denied that he was not an active farmer and he denied that he had behaved recklessly with regard to the debt. He stated that he had attempted to deal with the debt but had been unable to do so because of his sisters' conduct. He further advised that the debt arose as a result of a slump in the property market and due to the outbreak of TB which were all factors beyond his control.

The court's findings of fact and consideration

(1) What, if any, promise was made to the first-named defendant?

[91] Although the first-named defendant's sisters gave evidence that the father never represented to Matthew that he would inherit the farm I give little weight to that evidence as none of the sisters was living at the home and none was therefore present when representations were made and they were otherwise not fully aware of what was going on at the family home. I am satisfied on the evidence of both the plaintiff and the first-named defendant that the father repeatedly, expressly and impliedly assured Matthew that he would inherit the entire farm.

[92] I find that the father and the son enjoyed a very amicable relationship up until December 2013 when the bank proceedings for repossession came to a head. During the time prior to December 2013 I find that the father made it clear to Matthew on several occasions that he would inherit the farm. This was evidenced by the following facts:

- The father encouraged Matthew to leave school and to go Agricultural College at Greenmount.
- The father gave Matthew the dairy herd, milk quota and allowed him to retain the milk income.
- The father encouraged Matthew in all his attempts to expand the farming enterprise and he guaranteed loans to assist him to build milk parlours, buy stock *etc*. In particular the father was happy for Matthew to purchase Nixon Hall farm and again guaranteed a very substantial loan which was required to purchase this land.
- The father encouraged Matthew and his wife to give up their home in Enniskillen and move to live at the farmhouse.
- The father permitted Matthew to do works of repair and renovation to the farmhouse and to largely run the farm as he saw fit.
- The father's Will at that time was consistent with the promise made by the father as he left the entire farm in this Will to Matthew.

[93] I find however that the promise of inheritance was conditional on Matthew running the farm as a farm in such a way that he could pass it on to the next generation. I make this finding on the basis of:

(1) The evidence of Matthew that his father told him that he was to be the third generation of Graham farmers. Therefore, Matthew must have understood the promise of inheriting the farm was conditional on him being a farmer, farming the lands like his father and grandfather before him.

(2) The father's evidence in his affidavit which was sworn on 22 May 2017 at paragraph [14] when he stated as follows:-

> "The key point is the tradition in our family of maintaining a family farm by actively farming. The inheritor is the one who shows the propensity to maintain the family farm and generations of work through a further generation."

Again, in his affidavit sworn on 5 May 2018 at paragraph [7] he stated:

> "[Matthew] was only ever entitled to farm my lands and would only have been left the farm had he been actively farming. I come from a farming family and farms have only ever been inherited by those who continue to farming tradition. I am hugely proud of my farming work and wish for Matthew to continue the farming enterprise."

(3) The father's actions in giving Matthew the milk quota, herd and supporting his expansion of the farm and purchase of Nixon Hall all showed the father expected Matthew to be a farmer and to farm the land.

[94] I am therefore satisfied the promise that Matthew would inherit the farm was conditional on Matthew running the farm as a farm and doing so in a competent business-like manner so that there would be a farm to pass on to the next generation.

(2) What detriment, if any, did the defendant sustain?

[95] Matthew alleged that he had acted to his detriment through monetary and non-monetary reliance. In particular, he alleged that he spent money on purchasing a milk quota, building sheds, building a milking parlour and extending and renovating the farmhouse.

[96] The father submitted that there was no monetary detrimental reliance because all the expenditure was ultimately paid off by him when he repaid the Northern Bank loan of £1M. In addition, he asserted Matthew had the benefit of a rent free home and income from the farm for many years and as a result was able to enjoy a luxurious lifestyle with several foreign holidays.

[97] On the basis of the expert evidence I am satisfied that all of the expenditure on the farm buildings and farmhouse came from borrowings. These borrowings were either repaid from income Matthew obtained from the farm and/or were rolled into the Northern Bank loan which was ultimately repaid by the father. I am therefore satisfied that the costs of the renovation and building work was not a detriment to Matthew as he did not personally repay these debts. Accordingly, I am satisfied that there was no monetary detrimental reliance by Matthew and therefore he has sustained no monetary loss in this regard.

[98] I am however satisfied that Matthew's reliance on his father's promise did lead to non-monetary detriment. As a result of the promise Matthew left school after his GCSEs and went to Greenmount. I do not accept his sister's evidence that there was little else he could have done. Matthew had passed his 11 plus examination and attended a good grammar school. I am satisfied that if he had not been promised the farm he would have applied himself more to his school work and like his sisters could have gone on to third level education and could have if he had wanted, for example, have become an accountant. As a result of his father's promise however, he went to Greenmount and then came home to farm. I consider that his decision to become a farmer was a life changing decision as this decision had far reaching consequences. It determined his career and also determined where he and his family would live and how they would spend their time and money. I therefore consider there was substantial non-monetary detriment sustained by Matthew as a result of the promise made to him by the plaintiff.

(3) Is it unconscionable for the plaintiff to change his Will in the manner he has done?

[99] The father gave evidence that he had changed his Will so that the farm, rather than being left in its entirety to Matthew, is now to be divided equally between his eight children. This means that Matthew will inherit a one eighth share of the farm.

[100] In determining whether conduct is unconscionable each case is fact specific. It is therefore not possible to set out an exhaustive list of the relevant factors the court ought to take into account in the determination of the question of unconscionability. Nonetheless, I consider that the following circumstances are relevant factors which ought to be taken into account in most cases in determining unconscionability:

(a) The promise made.

(b) The extent to which the promise was fulfilled.

(c) The benefits obtained by the promisee.

(d) The detriment suffered by the promisee.

(e) Any detriment sustained by the promisor due to the action of the promisee.

(f) Any misconduct by the promisor or the promisee.

(g) The impact on the rights of third parties.

(h) Any claims that other beneficiaries might have to the estate of the promisor.

Promise made

[101] I have already set out my findings in relation to the nature of the promise made and the fact that it was a conditional promise.

Extent to which promise was fulfilled

[102] I find that Matthew fulfilled the promise to farm the land for a period of 21 years. During this time he worked initially closely with his father and devoted the majority of his time to farming and expanding the farming enterprise. I am further satisfied that initially he expanded the farm holding through substantial borrowings which his father consented to as evidenced by the fact he guaranteed loans up to £1M. After the purchase of Nixon Hall I find that the level of debt brought challenge. Rather than tightening his belt to deal with the debt however Matthew, I find, continued to lead a luxurious lifestyle, driving expensive cars and continuing to go on several foreign holidays. Instead of dealing with the debt

Matthew kept on increasing the borrowings and instead of farming he sought to deal with the debt by getting involved in non-farming activities such as the sale of sites and the installation of a bio digester. Later in 2004 rather than farming I find that Matthew reduced his farming activities and sold off all his animals. I accept that he had the misfortune of a TB outbreak, but he failed to restock and instead appears to have just kept and spent the £116,000 compensation. Thereafter, he started to sell off farm machinery and kept the proceeds and later he rented out the sheds and lands. I am therefore satisfied that by 2014 he had decided that he was not going to farm and allowed the farm to fall to disrepair and disuse which led to Departmental fines. I accept the evidence of Emma about the state of the farm when she visited it with her father.

[103] I therefore find that Matthew kept the condition in respect of farming the farm for 21 years. I consider that Matthew at that stage believed he had an entitlement to the farm and could do as he pleased with it. He became less and less interested in actively farming and became engaged in what his father described as "hair-brained" schemes. I consider that Matthew considered himself to be a gentleman farmer and, for example, purchased robots which he never installed or used. In addition he sought to make money by selling of building sites and/or selling or leasing his lands so that a bio digester could be installed. By the time the injunction was granted I find that he had sold the entire herd and was doing very little farming. In addition I find that Matthew breached the condition by his actions in failing to deal with the debt. His failure to deal with the debt meant the whole farm could have been lost and therefore there would have been nothing to pass on to the next generation. In the face of repossession proceedings Matthew continued to live a luxurious lifestyle and continued to keep the proceeds of the single farm payment and the TB compensation monies rather than paying off the debt. Without the sacrifices of his sister Sheryl and his father dealing with the debt I consider that Matthew would have sought to borrow more and more money until there would have been no equity in the farm and the entire farm would have had to be sold. Matthew simply failed to realise that he had to work to pay off the debt and could not continue to borrow and lead the high life. I find that it was only the father's actions which ultimately prevented the whole farm being lost by Matthew's recklessness and mismanagement.

Benefits obtained

[104] In terms of benefits obtained by Matthew I accept that he had rent free accommodation and a good income from the farm but I consider that this was in lieu of wages for the work that he carried out on the farm.

[105] I find that the £1M debt related to debts which had been incurred over the years by Matthew. Whilst some of this debt related to expenditure on the farmhouse and the building of outhouses on the farm I consider that most of the debt accrued because of Matthew's recklessness and luxurious lifestyle. I therefore consider that Matthew has had the benefit of £1M. In addition he has had the benefit also of the

proceeds of farm machinery, single farm payments and the TB compensation monies. I consider however that these monies largely relate to income which he would have been entitled to in terms of his employment as a farmer.

Detriment sustained

[106] In terms of detriment I have already set out my findings that I consider Matthew as a result of the promise lost the opportunity to purchase his own home and lost the opportunity to have another career together with the income that that would have produced.

Misconduct

[107] Although the father and Matthew enjoyed a very amicable relationship for many years this has sadly broken down. I consider that Matthew has behaved very badly towards his elderly father and as a result of his behaviour has caused him much stress and upset. In particular he failed to attend his mother's funeral which was particularly hurtful for his father. Further, he has failed to make contact with his father and has instead sent a hurtful letter in which he said "… you have had your day". In addition he put his father under pressure to install a biodigester and displayed no insight into the pain and hurt and stress that he has caused to his father.

[108] There were also allegations that Matthew had forged his father's signature on the Ulster Bank facility letter. I make no finding in respect of this as the court did not hear all the evidence in relation to it. As there are criminal proceedings pending in respect of this matter the first-named defendant exercised his right not to answer questions on the grounds of privilege against self-incrimination.

[109] Further I consider that there has been litigation misconduct by Matthew. Despite several discovery orders being made, Matthew failed to provide the financial documentation. In particular bank statements were only produced after the accountant gave her evidence-in-chief. If these statements had been produced when they ought to have been produced it would have been unnecessary for the accountant to produce a report and to give evidence as ultimately the production of the bank statements meant that a reconciliation of all of the monies coming in and going out could be made.

Claim by others on the estate

[110] The plaintiff has seven daughters. Like Matthew they each have a moral claim to his estate. I consider this is especially appropriate in circumstances where one sister now cares for her father and she has also assisted in paying off the bank debt. I consider that the claims by the sisters is a factor to be taken into account.

[111] Taking all of these factors into account I am satisfied that it is unconscionable for the father to renege on his promise and to now only give Matthew a 1/8th share of the farm. I find that this would not be adequate compensation for the loss he has sustained on reliance on the promise made.

(4) How to satisfy the equity.

[112] In determining the appropriate relief to be granted it is necessary to consider again the promise, the extent to which it was fulfilled, the nature of the detriment to the promisee, the benefit obtained by the promisee, any misconduct by the parties and the claims of third parties.

[113] I have found that the promise was fulfilled for approximately 21 years. Thereafter, I have found that Matthew was in breach of the condition as he failed to farm the land and preferred instead to lead the life of a gentleman farmer. When facing mounting debt he continued to live a luxurious lifestyle and instead of working to pay off the debt he gave up farming and engaged in non-farming, hare-brained schemes. In such circumstances I consider his recklessness would have led to the entire farm being lost. I am therefore satisfied that he was in breach of the condition attached to the promise and this is not therefore a case where equity demands the expectation should be satisfied.

[114] In terms of detriment I have found that Matthew lost the ability to purchase his own home and to pursue another career which would have continued to give him an income earning capacity.

[115] Although Matthew will suffer detriment I have found that he has obtained benefit. In particular he has had the benefit of income and rent free accommodation for 21 years and almost £1M which was paid off by the father.

[116] As outlined above I consider that there has been misconduct on Matthew's part including litigation misconduct. I further accept that the plaintiff's other children have a claim on his estate. In addition given the animosity in this case I consider that the claim should be satisfied so as to give a clean break settlement.

[117] Calculating how the equity is to be satisfied is not a precise science. The expectation in this case was the entire farm which equated to £3M approximately. Matthew has already received £1M. His detriment equates to the loss of a home and income. Considering all the circumstances in the round, including misconduct and the claims of others, and the need for a clean break, I consider that the equity in this case would be satisfied by giving Matthew the farm house and outbuildings at the Graan together with the 48 acres in Ratona. This equates to approximately £0.5M. I consider this is his entire entitlement. For the avoidance of doubt it is my view that he has no further claim on the estate of the plaintiff and the plaintiff is therefore free to leave his remaining estate as he so wishes.

Conclusion

[118] Accordingly, I make an order granting the farmhouse at the Graan and the outbuildings together with the 48 acres known as Ratona to the first-named defendant. I make a declaration that all the other lands are owned absolutely by the plaintiff and I grant an injunction restraining the defendants from entering into, occupying or farming the lands owned by the plaintiff, save for the lands at Ratona.

[119] I accept that the first-named defendant has obtained an order that is greater than the offer made in Calderbank letter. This is a case however in which I have found that there has been litigation misconduct on the first-named defendant's part and accordingly I make no orders as to costs.

[120] I would be grateful if counsel could draft the order which should include the appropriate maps, within the next 21 days. I will further stay the order for 28 days to allow the parties, if they so wish, to agree an alternative method by which the case can be resolved, whether this is by raising the sum of £500,000 or by the transfer of a different portion of land equivalent to this amount. The court will hear submissions in respect of this in the absence of any agreement by the parties.

[121] This is a very sad case concerning the breakdown in a relationship between a father and his only son and also a breakdown in relations between siblings. Despite attempts by the court to encourage the parties to seek an amicable resolution no such resolution could be found and therefore the court has had to make a ruling in this case. It is the hope of the court that the parties will be able in the future to heal the rift.