Neutral Citation Number: [2019] EWCA Civ 346

Case No: A3/2017/3528

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE,
BUSINESS AND PROPERTY COURTS IN LEEDS,
BUSINESS LIST (ChD)
His Honour Judge Davis-White, QC
(Sitting as a Judge of the High Court of Justice)
A30LS869

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/03/2019

Before:

LORD JUSTICE McCOMBE
LORD JUSTICE DAVID RICHARDS
and
LORD JUSTICE NEWEY

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Between:

(1) ROBERT ALAN LIDDLE (on his behalf and on behalf of MARY LIDDLE pursuant to the Order under CPR Part 19.8 of 4th July 2018)
(2) MARTIN PHILIP LIDDLE **Appellants**
(3) ANDREW STEVEN LIDDLE

- and -

(1) STUART DAVID LIDDLE (on his own behalf, as personal representative of DAVID WILLIAM LIDDLE DECEASED and on behalf of EDITH WINIFRED LIDDLE pursuant to the Order under CPR Part 19.8 of 14th March 2017)
(2) JOYCE ROSANNE LIDDLE (as personal representative of DAVID WILLIAM LIDDLE DECEASED and on behalf of EDITH WINIFRED LIDDLE pursuant to the Order under CPR Part 19.8 of 14th March 2017) **Respondents**

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Sean Kelly (instructed by Berwins Solicitors Ltd.) for the Appellants
James Malam (instructed by Steel & Switalskis) for the Respondents

Hearing date: 17 January 2019

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Approved Judgment

Lord Justice McCombe:

Introduction and Background

1. This appeal concerns the application of the provisions of a partnership agreement dated 23 January 2001 and made between members of the Liddle family. In particular, the case requires the court to determine the workings of those parts of the agreement which provide for the sums to be paid to "Outgoing Partners" (or their personal representatives) by "Continuing Partners" when one partner or more ceases/cease to be (a) partner(s) upon a retirement or a death. The appellants are Continuing Partners (i.e. paying parties); the respondents are Outgoing Partners and/or personal representatives of deceased parties (i.e. receiving parties). The partnership business was farming.

2. The appellants are represented by Mr Sean Kelly and the respondents by Mr James Malam. I am grateful to them for their arguments on the appeal.

3. The appeal is brought from the judgment and order of 13 September 2017 of HH Judge Davis-White QC (sitting as a Judge of the High Court). Permission to appeal to this court was refused by the judge but was granted by Patten LJ by an order of 2 July 2018.

4. The judge's principal finding was that payment of the purchase price, to be paid by the appellants to the respondents, was not delayed or suspended by the fact that the purchase price had not in fact been ascertained, under the machinery of the agreement, by the dates upon which stated instalment payments might (on one construction of the document) otherwise be due. Accordingly, the judge held that the appellants were in default of their payment obligations under the agreement and that an "acceleration provision", for the immediate payment of the entire price (still unascertained), applied.

5. The judge found the entire price became immediately due and payable, even before ascertainment of its total and before it could be known precisely what the proper instalment payments on any particular occasion should be. However, he also set aside statutory demands given by the respondents to the appellants, since they were not (in his judgment) given in respect of "liquidated" sums at the date of the service of the demands. That last finding is not challenged by the respondents.

6. The parties to the agreement were seven members of the Liddle family: David, Mary, Edith, Robert, Stuart, Martin and Andrew. David and Edith (both now deceased) were husband and wife and the parents of Stuart and his sister Joyce. Mary is the widow of Gordon Liddle; they were the parents of Robert, Martin and Andrew. David and Gordon were brothers and thus the dispute in these proceedings is between the family of Mary and the late Gordon Liddle on the one hand and the family of the late Edith and David Liddle on the other. Stuart and Joyce are the personal representatives of their late parents.[1]

7. The agreement provided that the partnership could be determined by any partner giving not less than 6 months' notice in writing to the other partners. It was also provided that, in the event of a partner ceasing to be a partner by reason of notice having been given,

[1] The court was informed for the first time after circulation of the draft of these judgments that Mary Liddle had died.

or by death, retirement or expulsion, the partnership should not determine as between the surviving or continuing partners.

8. Three of the original seven partners ceased to be partners. Stuart gave notice of retirement on 30 October 2011. David died on 8 December 2011 and Edith gave notice of retirement on 5 April 2013. She has since died.

Clause 13 of the Agreement and the Initial Questions Arising

9. Clause 13 of the agreement provides for the Continuing Partners to have a "call option" to purchase the share in the partnership of the Outgoing Partner and for an Outgoing Partner to have a "put option" requiring the Continuing Partners to purchase his/her share. It is and was common ground that the options in respect of the three Outgoing Partners have been exercised. By the time of the hearing before the judge, the purchase price in respect of each of the three shares had been agreed.

10. I have mentioned the principal issue that the judge had to determine. He identified three questions that had to be resolved by him. They were:

> "i) first, has there been an acceleration of liability to pay the purchase price, such that the continuing partners are now liable to pay the full purchase price or is payment to be by instalments?;
>
> ii) secondly, on what basis is interest payable (if at all) on one element (comprising 20%) of the purchase price?;
>
> iii) thirdly, was the purchase price, or part of it, as regards each of David and Stuart's shares, immediately payable prior to the service, on the continuing partners, of statutory demands in October 2016 such that the demands were valid? Those demands demanded payment of sums said to be due under clause 13 in respect of the purchase of such partnership shares. (There is a further separate issue as to whether one set of demands are defective as being made in terms in the name of "the personal representatives" of David, rather than those persons' personal names)."

11. The material parts of clause 13 of the agreement are as follows:

> "13. OUTGOING PARTNERS
>
> 1. (a) This clause shall apply if during the continuance of the partnership any partner shall die…. or shall retire or otherwise cease to be a partner ("the Determination Date") (hereinafter referred to as the Outgoing Partner which expression shall where the context so admits include the Outgoing Partner's legal personal representatives, assigns and successors in title) subject to the provisions of clause 12 hereof the Continuing

Partners shall have the option of purchasing the share in the Partnership of an Outgoing Partner on the terms contained in Clauses 13.2 and 13.3 PROVIDED ALWAYS that such call option shall be exercised only by a notice in writing given to such Outgoing Partner on or at any time within 2 calendar months following the Determination Date save where the Determination Date is the death of a partner when the notice period shall be 6 months (in each case hereinafter called "the Notice Period").

(b) The Outgoing Partner shall have the option of requiring the Continuing Partners to purchase his share in the Partnership on the terms contained in Clauses 13.2 and 13.3 PROVIDED ALWAYS that such put option shall be exercised only by a notice in writing given to each of the Continuing Partners on or at any time within the 2 month period immediately following such date as is 2 calendar months after the Determination Date.

2. UPON the exercise of either the call option contained in Clause 13.1 (a) or the put option contained in Clause 13.1 (b) the following provisions shall apply:-

(a) As soon as is reasonably practicable the accountants of the Partnership for the time being shall prepare a balance sheet and profit and loss account as at the Determination Date in accordance with the accounting principles and practices adopted in the last signed balance sheet and profit and loss account prepared pursuant to the provisions of Clause 9 of this Agreement but for the purposes thereof the assets of the Partnership (other than goodwill which shall be valued at £1) shall be shown at their market value as at the Determination Date such value to be agreed between the Outgoing Partner and the Continuing Partners and in default of any such agreement within 2 calendar months following the exercise of the said option to be determined by a valuer (acting as an expert and not as an arbitrator) to be nominated by the Outgoing Partner and the Continuing Partners jointly and in default of any such nomination within 1 month thereafter to be appointed by the President for the time being of the Institute of Chartered Accountants of England and Wales whose decision shall be final;

(b) [Costs of valuer]

(c) The share of profits due to the Outgoing Partner up to the Determination Date as shown in the said

account (not being profits of a capital nature or profits undrawn in any one or more previous 12 month periods expiring on the 5th April but including any accrued but unpaid salary) shall immediately on ascertainment be paid to him by the Continuing Partners.

(d) The purchase price shall be the net value of the Outgoing Partner's share in the Partnership as shown by and in the said account and balance sheet (but excluding any share of profits payable in accordance with sub-clause (c) hereof) and shall be paid by the Continuing Partners as follows:-

(i) On the Outgoing Partner surrendering his occupation of any dwellinghouse owned by the business (or in the event of death on the outgoing partner's widow surrendering her occupation of any dwellinghouse) the Continuing Partners shall pay to the Outgoing Partner a sum equivalent to 20% of the Purchase Price;

(ii) The balance of the Purchase Price shall be paid by the Continuing Partners by 40 equal quarterly payments the first of which shall be paid at the expiration of two months from the date of expiry of the Notice Period;

(iii) Provided that the first eight such quarterly payments are made in full and on the due dates they shall be free of interest;

(iv) The remaining 32 such quarterly payments shall be paid together with interest on the amount or balance of the Purchase Price for the time being outstanding as from the Determination [Date] at the rate of 1% per annum above the base rate of the Bank referred to in clause 10 from time to time and for the time being in force;

(v) If any quarterly payment is not paid on the due date interest shall become payable on that outstanding payment as from the due date at the rate of 3% per annum above the base rate of the Bank as aforesaid;

PROVIDED ALWAYS that: …

(vi) If any instalment of the said purchase price shall be in arrears for more than 21 days after the same shall have become due and payable then the whole amount or balance of the said purchase

> price then outstanding shall forthwith become due and payable together with such interest as aforesaid……"

12. The judge recorded a number of "agreed variations" to the clause 13 procedure that had been adopted by the parties.

13. First, Edith was for a period a "continuing partner" and should have been a purchasing partner in respect of Stuart and David. However, it had been agreed that the present appellants, as Continuing Partners, were to buy the shares of each of Stuart, David and Edith separately and that Edith's share was not to be enhanced by any part of the shares of Stuart and David.

14. Secondly, it was agreed that, rather than preparing balance sheets and profit and loss accounts as at the respective Determination Dates under the agreement (but with the partnership assets being valued by the expert), the accountants were to use ordinary accounting year end annual accounts for the partnership which were closest in time to the relevant Determination Date.

15. Thirdly, it had been agreed or assumed that, instead of the partnership accountants adjusting the available accounts and producing new Determination Date accounts, with the assets of the partnership shown at market value, the accountants would produce a schedule setting out the value of the Outgoing Partners' shares using figures taken from the ordinary partnership accounts and showing adjustments to take into account the revalued partnership assets.

The Course of the Proceedings

16. In his judgment, the judge sets out in some detail a number of procedural vicissitudes that occurred in the proceedings following their issue by the respondents on 18 November 2014. A shorter summary will suffice for present purposes.

17. The initial claim made in the action was that the appellants had failed properly to implement the clause 13 procedure. A "declaration" was sought that the partnership "be dissolved", alternatively orders were sought for the implementation of clause 13. It seems that, at the first directions hearing before District Judge Goldberg, the dissolution claim was abandoned and it was resolved that the clause 13 procedure should be followed, subject to agreed variations. From that hearing onwards, District Judge Goldberg retained management of the proceedings. Following disagreements between the parties, on 26 February 2016, the District Judge gave further directions, including as to service of Points of Claim and Points of Defence which were directed to the disputes that had arisen in working through the clause 13 procedure up to that date.

18. On 6 July 2016 there was a further hearing before the District Judge to resolve three points: first, whether the accountants' valuations of the Outgoing Partners' shares were "binding" on the parties; secondly, whether the expert valuer should have valued the properties occupied by the appellants on a vacant possession basis or not; and thirdly, (as Judge Davis-White QC put it) "whether interest under clause 13 ran from dates there set out or whether the requirement to pay interest was suspended until the purchase price had been ascertained".

19. The District Judge decided that the accountants did not act as experts in their determination of the amounts to be shown in the relevant accounts and that the figures produced were not binding on the parties. He held that the partnership dwelling houses were to be valued on a vacant possession basis. Finally, he decided that interest ran from the dates provided in clause 13, notwithstanding that the purchase price had not been ascertained.

20. We were told that the present appellants sought permission to appeal each of the three points decided by the District Judge. We were given to understand that HH Judge Raeside QC granted permission in respect of the decision on the valuation of the dwelling house and in respect of the interest issue but refused permission in respect of the decision that the accountants were not acting as "experts". Counsel further told us that when the matter came before Judge Davis-White QC on 14 March 2017, he revoked the limited permission granted by Judge Raeside and gave directions for the determination of outstanding issues on the accounts produced to date and on the construction of the agreement.

Agreement reached on the figures

21. In the meantime, on 27 June 2017, the appellants' solicitor met the partnership accountants to discuss outstanding matters and then in a letter dated 26 July 2017 the solicitor wrote in open terms to the respondents' solicitor indicating that the appellants accepted (based on the latest figures) that "the respective purchase prices [were] as claimed by" the respondents as follows: a) for David's share, £1,632,082; b) for Stuart's share, £914,551; and c) for Edith's share, £813,720.

22. The appellants claimed the continuing right to pay by the instalment pattern under clause 13. On that basis, as we were told, six instalments have to date become payable (on the appellants' case) and have been paid, the first eight being free of interest. Accordingly, Mr Kelly informed us that his clients had paid the following sums respectively on account of the prices payable to the respondents: a) £522,266.88 to David's personal representatives; b) £292,656.26 to Stuart; and c) £260,390.40 to the personal representatives of Edith.

23. In these circumstances, the matter came back before Judge Davis-White QC on 4 and 5 September 2017.

Conclusions reached by Judge Davis-White QC

24. The judge had to decide what the true function of the accountants was under the agreement and what the status of the figure that they produced was. He decided that the figures produced by the accountants were open to challenge by any partner if he or she did not agree them, and the matter could be brought to the court to resolve any such disagreement. However, the judge decided that if the accounts produced were found by the court to be accurate, the accounts would bind the partners.

25. The judge set out his conclusion on that point in two places in the judgment. First, at paragraph 33, he said:

> "33. … For present purposes, it suffices to point out that as clause 13(2)(d) states: the purchase price is to be the net value of

> the outgoing partners share in the partnership "as shown by the said account and balance sheet". The partners need to agree that this is correct in the sense that if they do not agree and one or more challenges it, they are entitled to do so. However, if challenged but the determination is found to have been correct by the court then it will be found to have bound the parties and the price will have been set by their product (that is, the account and balance sheet drawn up by them pursuant to clause 13 or, in the events that happened, the statement of the value of the share taken from the expert valuation and accounts agreed by the partners to be used for this purpose)."

Secondly, at paragraph 55, the judge said this:

> "55. … As I have said, in my judgment the liquidation or ascertainment was to be carried out by the accountants. If carried out correctly, then the claim was liquidated at that point (even if the correctness had to be, and was, confirmed by later court ruling). If they carried out their job incorrectly, and their operation of the formula under the agreement was challenged successfully, then until a correct formulation was achieved (by agreement or by a revised calculation being produced or, possibly a court order determining the point) there would be no liquidation or ascertainment of the purchase price."

26. So far as the validity of the statutory demands is concerned, it is clear that they were served before the accountants had produced a "correct" set of accounts. At that stage, therefore, the sum claimed had not been "liquidated" and statutory demands in respect of them could not validly be served. The judge set aside the demands. As already mentioned, there is no challenge by the respondents to that part of his order.

27. On the other point before him, the judge decided that payment of the purchase price under clause 13(2)(d)(i) and (ii) was not delayed or suspended by the fact that the purchase price had not been ascertained and that, therefore, the acceleration clause (clause 13(2)(d)(vi)) applied with the result that in each case the full purchase price was immediately due and payable to each Outgoing Partner or his/her estate.

28. The judge's reasons for so deciding appear in paragraph 43 of his judgment as follows:

> "43. I am satisfied that the wording of clause 13 is clear and unambiguous. Mr Kelly's submission in my view amounts to an attempt to imply a term rather than construe the contract, although I accept that the line between the two may at times be fine. I am also satisfied that the clause makes commercial sense in that it is workable and, from the claimant's perspective, rational. The fact that interest, and indeed the full sum, may fall due with the consequence that interest may fall due and the full purchase price obligation be accelerated makes sense in circumstances where the ongoing partners have a great deal of control over ascertainment of the purchase price and such consequence would be an incentive for them to resolve issues

> relating to the purchase price and, if necessary, to make a payment on account (which they should be well placed to estimate) to avoid default interest or the acceleration clause biting. It also may be said to reflect the fact that ongoing partners are enjoying the benefit of the partnership property for which they have not paid. I also note that, in the ordinary course, the continuing partners would have a fair amount of time to consider whether to exercise their call option and therefore what the likely purchase price would be. Finally, I am strengthened in my view by the fact that where the parties wanted to make a payment dependent on actual ascertainment of a figure they were well able to, and did, so provide (see clause 13(2)(c) in relation to the profits up to the Determination Date)."

29. The judge summarised his conclusions as follows (at paragraph 62):

> "i) payment of the purchase price under clauses 13(2)(d)(i) and (ii) is not delayed or suspended by the fact that the purchase price has not by then been ascertained and that in this case the acceleration clause in clause 13(2)(d)(vi) applies so that in each case the full purchase price as agreed is now due and payable;
>
> ii) the obligation to pay 20% of the purchase price under clause 13(2)(d)(i) in respect of Edith accrued on the making of the contract pursuant to the exercise of the relevant option;
>
> iii) no contractual interest is payable on the 20% element of the purchase price but that interest may be applied for under s35A Senior Courts Act 1981, though whether any interest and if so at what rate(s) still falls to be determined on application;
>
> iv) The statutory demands fall to be set aside."

The Appeal and my Conclusions

30. On the appeal, Mr Kelly for the appellants argues three grounds of appeal as follows:

> "1. The Learned Judge erred in law in deciding that the balance sheets produced by the accountants of the Partnership on 28/06/17 were binding on the parties and that the purchase prices became ascertained on that date. The Learned Judge should have held that the purchase prices were ascertained upon the acceptance by AA of such balance sheets on 25/07/17.
>
> 2. The Learned Judge erred in law in deciding that AA were obliged to make payments under Clause 13 before:
>
> 1) The purchase price had been ascertained; or

> 2) The value of the assets of the Partnership had been agreed or determined by an expert; or
>
> 3) The accountants of the Partnership had produced a document showing such purchase price.
>
> The Learned Judge should have held that no sum was payable under Clause 13 until the purchase prices were ascertained on 25/07/17 and that the payment mechanism provided by Clause 13.2(d)(ii) commenced on 25.07.17.
>
> 3. The Learned Judge erred in law in deciding that AA were in default under Clause 13 on the dates set out above so that the whole purchase price became payable. The Learned Judge should have held that AA were not in default as at the date of the Order."

31. In support of those grounds, Mr Kelly argues that the agreement (as construed by the judge) is largely unworkable. It is clear that on any practical application of clause 13, instalments would inevitably become payable before there was any realistic chance of the purchase price having been ascertained. At all events, there would be a need to have the partnership assets revalued, by an agreement (or more likely) by a professional valuer. It is to be recalled that, for example, land appearing in the standard partnership accounts at a historic value of £100,000 was in fact revalued at in excess of £6 million. Mr Kelly submits that it is entirely unrealistic to say that the Continuing Partners could assess the asset valuations or what the purchase price was likely to be; it is equally unrealistic to suggest that they were obliged to make an educated guess as to what was due and owing on any instalment date, enabling them to make an appropriate payment on account of the unascertained price.

32. Apart from the workability of the clause 13 machinery (or, as he puts it, the lack of it), Mr Kelly argues that literal construction of clear and unambiguous words in the contract, as the judge saw his construction to be, was wrong. Indeed, he advanced what he said was also a literal construction of the contractual words which were also clear and unambiguous and had the additional benefit of being realistic and workable.

33. That rival construction is this. Clause 13 defines what the purchase price of an Outgoing Partner's share was to be. It was to be derived from figures appearing in accounts prepared by the partnership accountants. There had to be correct accounts for this purpose. Until there were such accounts, there was no purchase price. Without such a price having been determined, there could be no identified "20% of the Purchase Price" for the purposes of clause 13(2)(d)(i) and no "balance … [payable] by equal quarterly instalments", for the purpose of clause 13(2)(d)(ii). There was no purchase price by reference to which any instalment payment could be calculated.

34. As before the judge, Mr Kelly says that, to make it workable, the instalment payment provision in clause 13(2)(d)(ii) has to be read with insertions as follows:

> "the balance of the purchase price shall be paid by the Continuing Partners by 40 equal quarterly payments the first of which shall be paid at the *later of* expiration of 2 months from

> the date of the expiry of the Notice Period *and the ascertainment of the purchase price* ".

35. Mr Malam, for his part, supports the judge's construction of the agreement. He submits that that construction follows fully and properly the words used; they are clear and unambiguous. It requires no reading of words into the contract. He prays in aid the decisions of the Supreme Court in *Rainy Sky v Kookmin Bank* [2011] UKSC 50 at [23] per Lord Clarke of Stone-cum-Ebony and *Arnold v Britton* [2015] AC 1619 at [17]-[20] per Lord Neuberger of Abbotsbury.

36. In short, Mr Malam argues that where the parties have used unambiguous language, as he says they have done here, the court must apply it. That is so even where the result is strange or produces an unexpected result for one side or the other.

37. Further, Mr Malam argues, there is an underlying commercial reality about the judge's construction. He submits that the appellants' construction has the effect of allowing property of the Outgoing Partner to vest in the Continuing Partners without any payment at all for a potentially lengthy period, affording the latter the facility to delay the ascertainment of the price and the need to make instalment payments, all the while farming the former partnership land for their own exclusive benefit. It is reasonable, submits Mr Malam, to think that the partners would have wished to avoid such a result and to require the Continuing Partners, with their knowledge of the partnership property and its value, to make an adequate assessment of the likely purchase price and of any instalment that was due at any time, so as to make instalment payments accordingly.

38. In the course of Mr Malam's argument, my Lord, Richards LJ, asked, "How do you pay a price if you do not know what it is?" Mr Malam's answer was that there can be a liability to pay even if one does not know the quantum of that liability until a later date. In effect, there would be a liability to pay now a fixed amount of a price that would only be ascertained at the later date.

39. I think that this point lies at the heart of the principal construction issue before us. For my part, I think that it is impossible to read the agreement as a whole as requiring the Continuing Partners to pay unknown sums. The application of literal construction does not, as I see it, require any party to make a part payment of a price that is unknown. Until there is a purchase price for the Outgoing Partner's share, which is shown correctly by accounts as envisaged by the partnership agreement, there is no price at all. It is impossible to define the obligation to pay a part of that price by way of instalment. There is nothing in the words of the agreement that indicates that a party has to make an assessment of the unknown by guesswork.

40. In my judgment, Mr Kelly's argument as to the literal words of the contract defining the purchase price is correct. Until the price is ascertained by the machinery of the agreement, there is simply no price to pay and one cannot pay either 20% of it or any equal instalment of a balance in the meantime. In the circumstances, I do not think that it is doing violence to the words of the agreement to read clause 13(2)(d)(ii) in the slightly revised fashion advanced by Mr Kelly and quoted in paragraph 34 above.

41. Turning to the next point, to decide Ground 1 of the grounds of appeal, it is necessary to decide when the purchase price was ascertained for the purposes of clause 13. It can be seen from the wording of that ground, as quoted above, it is submitted for the

appellants that the price was only ascertained at the time when the appellants accepted the final version of the balance sheets on 25 July 2017. In other words, it mattered not that the accountants may have produced accounts which were accurate and disclosed the correct purchase price on 28 June 2017; the price was not ascertained until the appellants accepted the same on 25 July 2017.

42. It will be seen from paragraph 33 of the judge's judgment, quoted above, that he decided that partners "need to agree" the net value of the Outgoing Partner's share and, if one of them did not, he/she was entitled to challenge in court the figures produced by the accountants,

> "…However, if challenged but the determination is found to have been correct by the court then it will be found to have bound the parties and the price will be set by their product".

43. I consider that this is right, but the judge's decision does not fully determine the *date* upon which the price is ascertained in the present circumstances. Here the figures were not initially accepted by the parties and a challenge was made in court. Thereafter, various new figures were provided which were not determined by the court. However, a final version was accepted as accurate by the appellants on 25 July 2017. Was the price ascertained, for the purpose of the agreement, when the accounts were produced on 28 June 2017, or when they were agreed by the appellants on 25 July?

44. Mr Malam argued that, if the correct date was 28 June (the date of the accounts), instalments would have become immediately due and payable and the acceleration clause would have kicked-in 21 days later. Therefore, as payment had not been made by that date, the whole of the price became due on a date prior to the agreement to the accounts given on 25 July.

45. The judge found that if a court decided that the accountants' "product" was correct then the parties were bound by that product and, presumably, in the judge's view, from the date when the product was produced, not from the date of the court's decision.

46. Here, however, we do not have a court determination of the price, but an agreement to new figures produced by the accountants after proceedings had begun. Is the effect that the date of the agreement sets the date of ascertainment of the price or is it the date of the presentation of the new figures by the accountants that counts?

47. It would seem strange that a party could hold up the ascertainment of the price for the purposes of clause 13 by failing to agree an obviously correct set of accounts. If the dispute then trailed through the processes of litigation, it would be odd perhaps if the recalcitrant party had gained (say) an 18 month "breathing space" until the court made a determination. That, however, is possibly to concentrate excessively upon one perceived "commercial" consideration at the expense of the words of the document.

48. It seems to me that in a "court determination" case, it would not be the court that would be fixing the price. If the court found that the accountants' figures had been right all along, it would surely make a declaration that the "purchase price" was "as shown by and in the said account and balance sheet prepared by X & Co. and dated the day of 20xx".

49. In other words, the court would find that the price had been fixed from the date of production of those accounts. Similarly, I think that, in our case, when agreement was given to the final figures on 25 July 2017, the effect was to signify agreement that the figures "shown" in the documents produced on 28 June reflected the "purchase price" under clause 13. Again, on a dispute as to the date of ascertainment of the price, the court's declaration should be the same as that stated in paragraph 48 above.

50. I would find, therefore, that the price here was ascertained on 28 June 2017.

51. This would mean, as I see it, any sum due under clause 13(2)(d)(i), on the basis of a partner or widow having surrendered occupation of a partnership dwelling house, would have become immediately due and payable on 28 June 2017. The same would be true of the first quarterly instalment of the balance. That too would have become due and payable on 28 June 2017. That would be the proper application of clause 13(2)(d)(i) and (ii) (in the case of (ii) with the revisions mentioned in paragraph 34 above).

52. Looking at the open letter from the appellants' solicitors to the respondents' solicitors accepting the new figures, it seems that nothing was to be paid until shortly thereafter by way of the cleared funds mentioned on page 2 of the letter. As I understand it, those sums were paid. However, it would seem that no sums were paid within 21 days after 28 June 2017, with the result that the acceleration provision in clause 13(2)(d)(vi) came into effect.

Outcome

53. It seems to me, therefore, that the appeal should be dismissed on ground 1. It should be allowed on ground 2, with the revision of the date of "25/07/17" there appearing to "28/06/17". The appeal on ground 3 would be dismissed.

54. If my Lords agree with the course that I suggest, then I would hope that an appropriate form of order can be agreed.

Lord Justice David Richards:

55. I agree.

Lord Justice Newey:

56. I also agree.