Neutral Citation Number: [2021] EWHC 1580 (Ch)

Case No: PT-2020-CDF-000002

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
PROPERTY TRUSTS AND PROBATE LIST (ChD)
In the estate of Evan Richard Hughes deceased

Wrexham Law Courts
Bodhyfyrd, Wrexham LL12 7BP

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Date: 11/06/2021

Before:

HIS HONOUR JUDGE JARMAN QC
Sitting as a judge of the High Court
Between :

GARETH HUGHES	**Claimant**
- and -	
(1) CARYS PRITCHARD	**Defendants**
(2) GWEN HUGHES	
(3) STEPHEN HUGHES	

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Mr Elis Gomer (instructed by **Allington Hughes Law**) for the **claimant**
The first defendant appeared in person
Mr Alex Troup (instructed by **Hugh James**) for the **second and third defendants**

Hearing dates: 18-24 May 2021
- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE JARMAN QC

HH Judge Jarman QC:

Introduction

1. In these proceedings the family of the late Evan Hughes who died in March 2017 aged 84, are in dispute as to the validity of his third and final will which he executed on 7 July 2016. I shall refer to each of the three wills by the year of execution. At that time he was suffering from moderately severe dementia and grieving for his son the late Elfed Hughes, who some months earlier had died in tragic circumstances. One of the provisions of the 2016 will was to leave some 58 acres of farmland on Anglesey known as Yr Efail to the claimant, his son Gareth. The defendants are respectively the sister, widow and eldest son of Elfed Hughes. Gwen Hughes, the second defendant, and her son Stephen Hughes, the third defendant, contend that the 2016 will is invalid on the grounds of lack of testamentary capacity, want of knowledge and approval and/or undue influence exerted by Gareth Hughes upon his father; or alternatively that Yr Efail is subject to a proprietary estoppel claim by Elfed' Hughes' estate whereby Yr Efail belongs in equity to that estate.

2. I heard over 20 witnesses over the course of four days, including the parties and the other two sons of Gwen Hughes. A few statements were agreed and I read two further statements admitted under the Civil Evidence Act 1995. Some of the witnesses gave evidence in person and some by video link. Some gave their evidence in Welsh and some in English. Mr Gomer of counsel represented Gareth Hughes and Mr Troup of counsel represented Gwen Hughes and Stephen Hughes. He called Carys Pritchard to give evidence on their behalf but otherwise although she is the first defendant she was not represented at the hearing and indicated that she did not have any questions and did not wish to make submissions.

Background

3. Despite the large number of witnesses, the background is largely uncontroversial. Evan Hughes lived all his life on Anglesey. He and the mother of his three children divorced in 1984. His second marriage also ended in divorce in 2003. During the last few years of his life he was in a personal relationship with Florence Jones.

4. He inherited farmland from his family and at the time of his death owned substantial assets including the bungalow where he lived known as Arfryn, 79 acres of farmland known as Bwchanan, another 58 acres of farmland about 3 miles away known as Yr Efail, and a cottage rented out known as Derwyddfa.

5. In the late 1980s he gave to his son Gareth and daughter Carys plots of land on which they built their homes, and to his son Elfed and his wife Bwchanan farmhouse, including 17 acres of farmland. The house which Gareth Hughes built on his plot was transferred to his ex-wife as part of their divorce settlement in 2008. Shortly afterwards, his father gave him another house which is now rented out.

6. As well as owning farmland, Evan Hughes was also an equal shareholder with his cousin Ian Hughes in a building company called J. Parry & Hughes Ltd (the company) which had been started by their grandfather over 100 years ago. The

company's business consisted mainly of the construction of dwellings. Evan Hughes supervised the work on site, and his three children all worked for the company. His cousin and his daughter worked in the office and his sons worked on site. Ian Hughes retired in 1984 and sold half and gifted the other half of his shareholding to the three children in equal shares. Carys Pritchard's husband Ray took over the office work.

7. As well as working for the company, Elfed Hughes also farmed his father's farmland and looked after his flock of sheep and herd of cattle together with his own. He worked very long hours. In the winter he focussed on farming, particularly during lambing. During the rest of the year he worked on the farm early in the mornings, evenings and at weekends, and worked for the company during weekdays. He hired staff to work on the farm work, and in due course his three sons Stephen, Geraint and Sion also helped. He bought his own farmland next to that of his father and farmed both as a single unit, although accounts were kept separately. In 1993 they jointly rented a farm called Rhosbeirio which consisted of about 300 acres of farmland.

8. For many years Evan Hughes had let his children and others know of his intentions regarding what would happen to his estate after his death, namely that his shares in the company would be left to his son Gareth and daughter Carys equally, and the farmland would be left to his son Elfed. He executed his first will on 18 December 1990 which put these intentions into effect. His second wife was given a right to reside for life in the bungalow at Arfryn, with remainder to his three children, who also shared the residuary estate equally.

9. After his second divorce, he executed a new will on 7 August 2005 which repeated the provisions of the 1990 will as to the company shares and farmland and the residuary estate. The bungalow at Arfryn together with garden land and his personal effects were left to his daughter Carys. All other freehold and leasehold property was given to his son Elfed. A pecuniary legacy of £2,000 was given to each of his eight grandchildren.

10. By then Gareth Hughes had taken over the supervision of the building sites upon his father's retirement from the company in 2003. The company continued to trade successfully for some years. However by 2014, business was beginning to decrease and the company sold property to pay off debts. Each of his three children put capital into the company and in 2016 he made a director's loan of just under £108,000. By then the company was making a significant loss and work dried up.

11. Elfed Hughes' three sons each found employment away from the farm. However he was keen for his son Geraint to return to the farm to work and over a period of five years, including when the latter was at university, tried to persuade him to do so. Eventually, he succeeded, and in 2012 Geraint Hughes gave up his job with the local authority and went to work with his father on the farm for less than half the pay that he had been used to. In a particularly vivid part of the latter's oral evidence, he said that he continually asked his father for a wage rise after that, but his father became annoyed and told him not to ask, as everything would be his one day (spoken in Welsh, after an expletive, as "job gyd i ti un diwrnod"), so he stopped asking.

12. It was in 2014, by which time Evan Hughes was in his late 70s, that his family began to notice lapses of memory and behavioural changes in him. This went beyond such lapses as losing keys, forgetting to shut gates on the farm, being confused as to the time of day, and erratic driving, which many witnesses tell of. There are two or three incidents in this period which in my judgment are telling.

13. The first occurred in 2014 when he met his cousin Ian and his wife out shopping. Both gave evidence that he looked blank and did not recognise his cousin at first, as although by this time they met infrequently he and Ian Hughes had been business partners for more than 12 years.

14. The second happened in May 2015 when he went up to Bwchanan where his grandson Geraint was living at the time. Prior to this the two had not had a cross word. His grandfather (or Taid as he called him using a term in Welsh) started shouting at him for keeping sheep and cattle in the same field, although this had been the practice for many years. He was furious, and this left his grandson stunned and on the verge of tears.

15. During the end of lambing in March 2016, Geraint Hughes was at Bwchanan with his grandfather looking at some young lambs which had just been let out on a field known as Waen. His grandfather referred to the lambs as heifers and to the field as Yr Efail, which was the name of his land some two to three miles away.

16. His three children agreed that it would be wise for their father to execute a lasting power of attorney and agreed to share the cost equally. On 4 March 2015 he granted such a power to his daughter Carys. She says that it was her brother Gareth who approached her with this suggestion, which I accept.

17. Later that year Elfed Hughes became depressed and on 18 September 2015 he took his own life. This of course had a devastating effect on his immediate and his wider family including his father. The latter was hospitalised for two days in December 2015 because of gastrointestinal bleeding. He was confused and so his GP, Dr Harri Pritchard, referred him to a psychiatrist.

18. Later that month he was assessed by a consultant psychiatrist Dr Gutting. He scored 47/100 on an Addenbrooke's test, indicating a moderately severe degree of impairment. A CT scan was carried out on 27 April 2016 which revealed evidence of an old stroke and damage to the small sized blood vessels of the brain.

The making of the 2016 will

19. However, he was astute enough to realise that it might be prudent to change his will following his son's death. On 11 March he attended an appointment with Manon Roberts, a solicitor at T. R. Evans Hughes & Co. He was driven to the office by his son Gareth, who also attended the meeting. Manon Roberts had not met him before, and did not then have a copy of his 2005 will. She describes him as "distant" during the meeting.

20. Instructions were given for a new will. She now cannot recall who spoke in relation to the instructions. The main changes which were proposed to the provisions of the 2005 will were as follows. Yr Efail was to be left to Gareth Hughes and the remainder of the farmland was to held on trust for Gwen Hughes for life or upon giving up farming and then for her three sons equally. The property known as Derwyddfa was to be left to his daughter Carys, and instead of a gift of £2,000 to each of his grandchildren, they were to inherit the residuary estate in equal shares.

21. After this initial meeting, Manon Roberts spoke to senior colleagues about the proposed new will. They advised her that it was essential to obtain a capacity assessment before a new will was executed.

22. There were further meetings between Evan and Gareth Hughes and Manon Roberts concerning the proposed new will on 30 March and on later dates. In respect of each a detailed attendance note was taken. The instructions remained consistent throughout.

23. At around this time, Ian Hughes was told by his cousin Evan that he was not sure of the full extent of the land which he owned and asked by him to get a plan showing such land. Ian Hughes provided him with such a plan in or around April 2016.

24. By letter dated 25 May 2016 from the solicitors Dr Pritchard was requested to provide such an assessment. A copy of the 2005 will, which by then Manon Roberts had obtained, and a draft of the 2016 will was enclosed. Dr Pritchard went to see Evan Hughes at his home on 14 June 2016, taking a draft of the 2016 will. Florence Jones was also present at the meeting. Dr Pritchard noted that Evan Hughes was aware of the purpose of the meeting and was calm, fully orientated and did not appear to be confused. Dr Pritchard asked him to outline what was in the draft will and he did so with very little prompting. By letter of the same date to the solicitors Dr Pritchard confirmed that he had no issues with the capacity of Evan Hughes to change his will and would be happy to act as witness.

25. On 8 June 2016 an inquest was held into the death of Elfed Hughes. His father did not attend but Carys Pritchard went the next day to inform her father of events. She says that on that visit he did not seem to know what was going on and was agitated. He told her that he had seen his late son at the window.

26. Shortly afterwards she went abroad on a visit of some weeks, during which she did not carry out her usual duties of cleaning, washing and cooking for her father or dealing with his paperwork. The paperwork was taken over by Gareth Hughes.

27. On 7 July 2016 Dr Pritchard attended the solicitors when the draft will was read over to Evan Hughes by Manon Roberts, and after each clause he confirmed that he agreed. The plan of his land which Ian Hughes had provided was attached to the draft will. Gareth Hughes drove his father to the office but remained outside the room during this part of the meeting. The 2016 will was then signed and witnessed by Dr Pritchard and Manon Roberts. Dr Pritchard them left, and Gareth Hughes came in. His father then signed forms giving him lasting power of attorney and revoked that previously granted to Carys Pritchard.

Events after the making of the will

28. On 19 July 2016 Dr Pritchard referred Evan Hughes to Twm Jones, a community psychiatric nurse, stating that he "has mixed type dementia which is deteriorating quite rapidly." His attendance note also records that his son Gareth explained that his father sometimes cannot see anything more than what is straight in front of him. When Gareth Hughes was cross examined about this he said that he meant that his father was "blinkered." Twm Jones repeated the Addenbrooke's examination on 10 November 2016, again in Welsh, when the score was 41/100.

29. Between August and October 2016 Gareth Hughes, his wife and his father had meetings with another solicitor in a firm which merged with that of Manon Roberts in May 2016, Rhys Cwyfan Hughes. He was aware of some of the medical background and the assessment of Dr Pritchard but not of the other assessments. He says that Evan Hughes gave instructions to transfer shares in the company to his son Gareth, and describes him as a forceful personality. He noted after such a meeting on 12 September that an issue arose as to Evan Hughes' capacity but that his instructions were clear and that he took an active part in the discussion. The conduct of his daughter Carys in filling out a blank cheque some months earlier which he had given her for the costs of a hip operation had upset him. Instructions were given for a letter to be sent her saying that she should no longer visit him. Rhys Cwyfan Hughes noted that Evan Hughes stated several times that he was the boss, but could not recall whether it was father or son who gave instructions for the letter.

30. He also attended a company meeting in October 2016 at which Evan, and Gareth and Stephen Hughes and Carys Pritchard were present when the former asked his daughter why she was not visiting. She referred to the letter. Her father said that he knew nothing about it, even though it had been copied to him. She said in cross examination that he seemed bewildered. Stephen Hughes in cross-examination said that his grandfather seemed to have forgotten about it.

31. Rhys Cwyfan Hughes accepted in cross examination that he had indicated in the meetings that any stock transfer form should be signed in the presence of two partners in the firm and after Dr Pritchard had carried out a further assessment. He accepts that he chased Gareth Hughes for such an assessment, but the latter in cross-examination maintained that it was the solicitor who was to do this.

32. In January 2017, Evan Hughes signed a stock transfer form to transfer 25 of his shares in the company to his son Gareth, without either of the safeguards suggested by Rhys Cwyfan Hughes being caried out. In cross examination Gareth said that his father had been giving him earache about it so he got them signed and took them into the solicitor.

33. Dr Pritchard subsequently told Gareth Hughes that he doubted his father's capacity to understand these details. Carys Pritchard wrote to the Office of the Public Guardian expressing concerns about her brother taking advantage of their father, and her solicitors wrote to her brother's solicitors objecting to the transfer because of lack of capacity. On 28 February 2017 Twm Jones made a POVA (Protection of Vulnerable Adults) referral to social services.

34. However that referral and the OPG's investigations were overtaken by the death of Evan Hughes on 7 May 2017, aged 84, as a result of dementia-related complications.

35. I now proceed to consider each of the heads of counterclaim raised by Gwen and Stephen Hughes in turn. There was no dispute before me as to the relevant legal principles, which I can therefore deal with quite shortly. However the parties differ as to the application of the principles to the facts. I shall also deal under each head with issues of fact which need to be resolved in order to reach a determination.

Testamentary capacity

36. The first head is whether at the time of executing the 2016 will Evan Hughes had sufficient testamentary capacity to execute a valid will. The classic test of such capacity remains that set out in *Banks v. Goodfellow* (1869-70) LR 5 QB 549. Cockburn CJ said at page 549:

> "It is essential …that a testator shall understand the nature of t and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties, that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made."

37. It has been established that that test survives the Mental Capacity Act 2005 (see *Clitheroe v. Bond* [2021] EWHC 1102 (Ch)). What has become the known as the golden rule is that where there is doubt about testamentary capacity, that should be assessed by a medical expert.

38. The status of such an assessment was considered by the Court of Appeal in *Sharp v. Adam* [2006] EWCA Civ 449. May LJ stated at paragraph 27:

> "… [Counsel] on behalf of the Appellants, came quite close to submitting that such meticulous compliance with the golden rule should in principle be determinative. In our view, this would go too far. The opinion of a general practitioner, unimpeachable in itself and supported by that of one or more solicitors, may nevertheless very occasionally be shown by other evidence to be wrong. The golden rule is a rule of solicitors' good practice, not a rule of law giving conclusive status to evidence obtained in compliance with the rule."

39. This point was also addressed by Briggs J, as the then was, in *Key v. Key* [2010] EWHC 408 (Ch), at paragraph 8:

> "Compliance with the golden rule does not, of course, operate as a touchstone of the validity of a will, nor does non-compliance demonstrate its invalidity. Its purpose, as has repeatedly been emphasised, is to assist in the avoidance of disputes, or at least in the minimisation of their scope. As the expert evidence in the present case confirms, persons with failing or impaired mental faculties may, for perfectly understandable reasons, seek to conceal what they regard as their embarrassing shortcomings from persons with whom they deal, so that a friend or professional person such as a solicitor may fail to detect defects in mental capacity which would be or become apparent to a trained and experienced medical examiner, to whom a proper description of the legal test for testamentary capacity had first been provided."

40. He said this at paragraphs 95 and 96:

> "Without in any way detracting from the continuing authority of Banks v Goodfellow, it must be recognised that psychiatric medicine has come a long way since 1870 in recognising an ever widening range of circumstances now regarded as sufficient at least to give rise to a risk of mental disorder, sufficient to deprive a patient of the power of rational decision making, quite distinctly from old age and infirmity. The mental shock of witnessing an injury to a loved one is an example recognised by the law, and the affective disorder which may be caused by bereavement is an example recognised by psychiatrists, as both Dr Hughes and Professor Jacoby acknowledged. The latter described the symptomatic effect of bereavement as capable of being almost identical to that associated with severe depression. Accordingly, although neither I nor counsel has found any reported case dealing with the effect of bereavement on testamentary capacity, the Banks v Goodfellow test must be applied so as to accommodate this, among other factors capable of impairing testamentary capacity, in a way in which, perhaps, the court would have found difficult to recognise in the 19th century.
>
> Banks v Goodfellow was itself mainly a case about alleged insane delusions. Many of the cases which have followed it are about cognitive impairment brought on by old age and dementia. The test which has emerged is primarily about the mental capacity to understand or comprehend. The evidence of the experts in the present case shows, as I shall later describe, that affective disorder such as depression, including that caused by bereavement, is more likely to affect powers of decision-making than comprehension. A person in that condition may have the capacity to understand what his property is, and even who his relatives and dependants are, without having the

> mental energy to make any decisions of his own about whom to benefit."

41. At paragraph 97 Briggs J summarised the burden of proof in such cases. The burden of proving such capacity in upon the person propounding a will. Where the will is duly executed and appears rational on its face, then the court will presume capacity, in which case the evidential burden then shifts to the objector to raise a real doubt about capacity. If a real doubt is raised, the evidential burden shifts back to the person propounding the will to establish capacity none the less.

42. At paragraph 98 the judge continued:

> "Finally, the issue as to testamentary capacity is, from first to last, for the decision of the court. It is not to be delegated to experts, however eminent, albeit that their knowledge, skill and experience may be an invaluable tool in the analysis, affording insights into the workings of the mind otherwise entirely beyond the grasp of laymen, including for that purpose, lawyers and in particular judges."

43. Briggs J in paragraph 101 cited Erskine J in *Harwood v Baker* (1840) 3 Moo PC 282, 290 as follows:

> "…the protection of the law is in no cases more needed, than it is in those where the mind has been too much enfeebled to comprehend more objects than one, and most especially where that one object may be so forced upon the attention of the invalid, as to shut out all others that might require consideration."

44. In *Ashkettle v. Gwinnett* [2013] EWHC 2125 (Ch) Mr Christopher Pymont QC sitting as a judge of the High Court said at paragraph 43:

> "Any view the solicitor may have formed as to the testator's capacity must be shown to be based on a proper assessment and accurate information or it is worthless."

45. Moreover, capacity must be considered in relation to the particular transaction and its nature and complexity (see *Hoff v. Atherton* [2004] EWCA Civ 1554 at paragraph 35 and *Perrins v. Holland* [2009] EWHC 1945 (Ch) at paragraph 40).

46. Also to be taken into account are any promises which Evan Hughes made in relation to Yr Efail. HH Judge Matthews, sitting as a judge of the High Court in *James v. James* [2018] EWHC 43 (Ch) said at paragraph 117:

> "Of course, if it had been shown that the testator promised to give particular land to [the claimant] then, whether or not [the claimant] relied to his detriment on that promise, that would be a matter to be taken into account in assessing how far the testator had capacity to appreciate the claims on his inheritance."

47. In *Simon v Byford* [2014] EWCA Civ 280, Lewison LJ giving the lead judgment in the Court of Appeal, observed that capacity doesn't require a testator to remember the terms of a past will they made, or the reasons why it provided as it did, as long as the testator is capable of accessing the information, if needed, and of understanding it once reminded of it. In similar vein, HH Judge Matthews in *Todd v Parsons* [2019] EWHC 3366 (Ch) at paragraph 147 observed (obiter) that the fact that a testator may have forgotten having made a promise to a beneficiary as to what a will may contain is not conclusive on the issue of capacity.

The medical evidence

48. In the present case the parties jointly instructed a consultant old age psychiatrist, Dr Hugh Series, to express a view on the testamentary capacity of Evan Hughes at the time of executing the 2016 will. He produced a report dated 6 March 2021 which sets out the documents upon which it was based. These included the pleadings and certain orders in the present proceedings, Evan Hughes' medical records, copies of his three wills, interim estate accounts and the witness statements of Dr Pritchard and Manon Roberts. No other witness statements were provided to him.

49. In his report, Dr Series referred to the assessment in March 2016. In paragraph 7.2.2, he stated that Evan Hughes' score indicates a moderately severe degree of cognitive impairment, despite his lack of insight into the impairment. He had particular cognitive deficits in the areas of attention, memory, and fluency. The CT scan showed evidence of an old stroke together with widespread damage to the small sized blood vessels to the brain. Both of these, according to Dr Series in paragraph 7.2.5 pointed to vascular dementia.

50. At paragraph 8.2.1 Dr Series explained the correlation between such impairment and testamentary capacity:

> "The is a relatively poor correlation between cognitive impairment and testamentary capacity. However, in my experience, where the degree of impairment is mild, many people will retain testamentary capacity. Where the degree of impairment is severe, most people will lack testamentary capacity. Where the degree of impairment is moderate, as here, testamentary capacity may or may not be retained, and it is necessary to examine the evidence in such cases particularly carefully."

51. In paragraph 8.1.5 of the report, Dr Series dealt with Evan Hughes' understanding of any moral claim of the estate of his son Elfed to Yr Efail. He said this:

> "In my opinion I think it is more likely than not that [Evan Hughes] would have been able to recall and appreciate that Elfed had farmed the land, although I am doubtful that he would have had a clear recollection of what he might or might not have promised Elfed in the past about it."

52. At paragraph 8.2.3 Dr Series noted that there appears to have been a relatively rapid decline in the condition of Evan Hughes in the year following the execution of the 2016 will. In his conclusions at paragraph 9, he stated that the presence of moderately severe cognitive impairment raises a doubt about testamentary capacity, but does not in itself decide the matter one way or the other. The final sentence of his report reads as follows:

> "In the present case, in my opinion the combined evidence of the solicitor in her attendance notes and the doctor in his records and letter suggests to me that it is more likely than not that [Evan Hughes] had testamentary capacity when he gave instructions for and then executed his 2016 will."

53. So far as the latter is concerned, in his written and oral evidence, Dr Pritchard himself cast some doubt on the assessment which he carried out on Evan Hughes at the request of Manon Roberts. The reason he did so was that in carrying out his assessment, he was under the apprehension that the proposed new will made only minor changes to the 2005 will so as to substitute the sons of Elfed Hughes as the beneficiaries of the gift of land previously given to him. This was despite the fact that he had been sent copies of the 2005 will and a draft of the 2016 will.

54. Dr Pritchard says he saw Evan Hughes in surgery on 19 May 2016 for a chest infection. He made an entry in the records as follows:

> "Senile dementia (First). Appears better. Very logical. Needs to change will after Elfed's death – wants to give share to Gwen and the boys – nothing complex. Has full capacity and understands what he needs to do."

55. He also says that Gareth Hughes came to his surgery on 25 May 2016 to explain that a solicitor would be writing to assess his father's capacity to change his will, and told him that the purpose of the change was to leave the land to the sons of Elfed Hughes instead of to their father. In cross-examination Dr Pritchard accepted that he did not have a full recollection of that meeting and made no note, but maintained that Gareth Hughes did say to him that the proposed changes were "small."

56. When Gareth Hughes was cross-examined about this, he accepted that he did go to the surgery at about that time, he said on his own health issues, and accepted that the subject of his father changing his will came up. He said that he thought he did inform Dr Pritchard that it was proposed that half of his father's land was to be left to him. He said he went through the proposed will "a little bit" but did not recollect the details. He added that he would not deliberately misrepresent the proposed will to the doctor.

57. In my judgment, Dr Prichard's recollection of his meeting with Gareth Hughes is likely to be the more reliable one. Although there is no note of that meeting, had the latter said that the proposed changes included leaving a significant part of the farm land to him, just a week after Dr Pritchard had noted that Evan Hughes had

told him that he simply wanted to change the will in light of his son's death to provide for his widow and sons, then it is likely that alarm bells would have rang.

58. As it was, Dr Pritchard himself states at paragraph 12 of his witness statement:

> "As far as I recall, when I checked the Wills provided by Mr Hughes' solicitor in May 2016, there was no major change except the substitution of Mr Elfed Hughes with Mrs Gwen Hughes and Sons, and it was a surprise to me when I later found out, in or around June 2017, that other changes had been made."

59. He expanded upon this in his oral evidence by saying that he was worried that the changes were far more complex than he first thought. As a result he did not question Evan Hughes as to the reason why he was proposing to leave 58 acres to his son Gareth rather than to his daughter in law Gwen Hughes and/or her sons. Had he known of this proposal he would have asked this question. However, as he was the GP to several members of the family, had he known of this change it is more likely that he would not have carried out the assessment at all but passed it out to an independent medical expert. It was a matter of speculation whether or not the outcome of a full assessment would have made any difference.

60. In my judgment this evidence, which I accept, does impact significantly upon the weight to be attached to Dr Pritchard's assessment and in turn upon Dr Series' conclusion, which is based in part upon that assessment. On the facts of this case, it does not mean that no weight should be attached to Dr Pritchard's evidence. His recording of the assessment itself in my judgment is an indication that Evan Hughes did have testamentary capacity at that time. Moreover, Dr Pritchard in his oral evidence said that on the day of the execution of the 2016 will when Evan Hughes was shown the map attached to the draft will, he said without prompting that Yr Efail was to go to his son Gareth, but he did not say that this was a change.

61. That also impacts on the evidence of Manon Roberts, as she accepts that she placed reliance upon Dr Pritchard's evidence. Nevertheless she maintained in cross-examination that during her attendances upon Evan Hughes she had well in mind the *Banks v Goodfellow* test, whilst also accepting that she has no medical qualifications.

62. In cross-examination she explained her use of the word "distant" in her attendance note of her first meeting with Evans Hughes on 11 March 2021 as being "as if he had a bit of a cloud over him." She accepted that at this meeting she was not told about his medical background. In the meeting on 30 March 2016 she described him as having "a bright twinkle in his eyes." It is common ground that at this stage Evan Hughes was in denial of his condition which is not an uncommon feature of it, and this observation in my judgment gives little insight into his testamentary capacity.

63. She did not see the 2005 will until 13 April 2016 when she received a copy from other solicitors. She forwarded a copy to Gareth Hughes' home address. She confirms in her witness statement that she did not at any stage discuss the 2005 will with Evan Hughes or ask him as to why he wanted to change the provision of his

land to his son Elfed so that 58 acres were to go instead to his son Gareth. This was also the position of the day of the execution. She read out the draft will and explained the land by reference to maps. Evan Hughes nodded and agreed. Dr Series, in answering questions on his report, says that it is possible that his measured impairment, which was partial, in visuospatial function could have caused him some difficulty in interpreting maps, but thinks it is likely that he would have relied more on his memory and knowledge of the land which he had been familiar with for many years rather than on looking at maps.

64. At the end of Manon Robert's attendance note of that day she states that she had "no issues whatsoever" with capacity, based upon his being "able to answer open questions without any issue as well as volunteering information and having a general conversation." Accordingly in my judgment, her evidence is an indication of capacity but it has its limitations for the reasons set out above.

Other evidence as to capacity

65. In these circumstances, in my judgment, it is not surprising that Dr Series came to the conclusion that he did primarily on the basis of the records and letter of Dr Pritchard and the notes of Manon Roberts. However, as he observed, it is necessary to examine the evidence very carefully. It is significant that he was only sent the witness statements of Dr Pritchard and Manon Roberts. He did not have the advantage which I have had of seeing and hearing many witnesses who knew Evan Hughes over many years.

66. Gareth Hughes relies upon his own evidence, that of another solicitor Rhys Cwyfan Hughes who dealt with the share transfer in 2017, the evidence of Twm Jones and of a neighbour Ken Williams. He relies on the statements of his aunt, and sister of his father, Nancy Thomas, and of Florence Jones. In respect of the latter, both are elderly and said to be infirm, although no medical evidence was adduced. Accordingly their statements were admitted under the Civil Evidence Act 1995. They both say that Evan Hughes wanted to give something more than just shares in the company to his son Gareth after the death of his son Elfed, because the downturn in the company's financial situation made them less valuable than previously and he wanted to try to be fair to his two children as well to Gwen Hughes and her sons. This is a further indication of testamentary capacity, but as this evidence was not tested in cross-examination only limited weight can be attached to it.

67. As for the evidence of Gareth Hughes, he to his credit accepted that after his brother's death, his father was no longer the man that he used to be and became frail. He maintained however that his father continued, until just the last couple of months of his life, to know his own mind and that he was the boss. He accepted that there were times of confusion, but said that this was due to urinary tract infections, which it is common ground can cause confusion.

68. He accepted that on 3 May 2016 in his conversations with Manon Roberts, he said that his father was deteriorating "from week to week" as her notes record. In cross-examination he said that he was exaggerating this deterioration because his father

was giving him "earache" about getting his will changed and he wanted Manon Roberts to speed up the process.

69. There was some evidence that during this period, and later on, Evan Hughes did have episodes where some aspects of his memory appeared to be good, such as when in March 2017 he recalled that Ken Williams' brother had died, which he had a year earlier. Moreover, such episodes were accepted by some of the witnesses called on behalf of Gwen and Stephen Hughes. However, the overall picture consistent with the medical evidence is deterioration from 2014, to his not being the same man after the death of his son in 2015, to moderately severe impairment due to vascular dementia by March 2016, followed by relatively rapid deterioration. On the information before Dr Series, he states that that occurred in the year following execution of the 2016 will in July of that year. In my judgment it is more likely that Gareth Hughes said what he did to Manon Hughes about his father's deterioration in May 2016 as that is what he perceived at the time, and that is what was happening.

70. Soon after his son died, Evan Hughes went to have dinner with Gwen and Stephen Hughes. They both say that he was worried about his cattle during the forthcoming winter. His daughter-in-law said that they would carry on caring for his cattle, just as her late husband had done. In response, her father-in-law replied that he was relieved to her that and that he was keen to carry on the arrangement with them which he had had with his son. He wanted Geraint to carry on what his father had done. He further said that nothing would be changing in regard to the land.

71. Towards the end of 2015, Geraint Hughes attended a meeting at his grandfather's home to discuss the future of the farm following his father's death. Carys Pritchard was also there, as was Richard Williams, who was acting as the accountant for both grandfather and grandson. The latter was told by his grandfather that he wanted him to carry on his father's work on the farm including look after his stock. He was only 25 at the time, and says he was finding it difficult to cope with everything following his father's death (although this was not the perception of Richard Williams). He raised the issue of payment for looking after his grandfather's stock, to which the latter responded that he would look after him and should not look for such payment as they "would own everything one day."

72. Richard Williams in his witness statement and Carys Pritchard in her oral evidence gave some support to that of Geraint Hughes as to that meeting. The evidence on this point, in particular of the latter, was not seriously challenged on this point and I accept it.

73. Richard Williams in his witness statement also relates a meeting with him and Evan and Gareth Hughes on 3 March 2016 in relation to the company shares. I shall return to consider his evidence in more detail when dealing with the head of undue influence. So far as testamentary capacity is concerned, what is relevant is that Richard Williams states that Evan Hughes considered that his son Elfed and now his family were deserving of his land and stock due to his son's dedication to the farming business. It had always been Richard Williams' understanding that the farmland would be left to his son Elfed and the company would be left between his son Gareth and daughter Carys. He further states that he had the feeling that Evan

Hughes was reluctant to change the understanding that his son and family was to inherit the land. The issue of the value of the company shares was mentioned by Gareth Hughes who was concerned about the loss of value and the uncertainty of future earnings. His father responded that he had put enough money into the company to make it a success.

74. Yet about a week later in the first meeting between him and his son Gareth and Manon Roberts, instructions were being given for 58 acres of the land to be left to his son Gareth. Later that March, Richard Williams says that Evan Hughes asked him about the implications if he were to sell Yr Efail, to which he responded that there would be a hefty CGT liability if he did so in his lifetime. Evan Hughes then decided against it and said that any sale of farmland would be disrespectful to his son Elfed and his family.

75. There was telling evidence in similar vein from other witnesses of this understanding. Some, such as Evan Hughes' financial advisor David Morgan, and his cousin Ian Hughes, speak of such understanding over many years. Others, such as neighbouring farmers John Owen and Robert Tudor, tell of specific conversations when they were told by Evan Hughes of his testamentary intentions in this regard.

76. Ian Hughes in his written statement says that he and his wife visited Evan Hughes every third Sunday after the death of his son. On such visits he took a couple of minutes to work out who they were. On some of those visits he couldn't remember working with his cousin and thought he was the only one who owned the company. During some of these visits he made it clear that he wanted to ensure that the farm and the land was kept for his grandsons, and whilst wishing to protect their mother, did not want to see the land going from the family in the event that she remarried. He discussed changing his will, but in a way that suggested a "neatening up," in the words of Ian Hughes, to ensure that if his daughter-in-law did remarry her sons would inherit the farm. He did not tell his cousin that he was considering giving part of the land to his son Gareth.

77. Gareth Hughes to his credit in cross-examination accepted that it had long been an understanding in the family that he and his sister would inherit the shares in the company and his brother would inherit the farm and the land. He said that his father did not say this to him, but his sister implied it. In my judgment there is an impressive body of evidence that there was such an understanding over many years prior to the death of Elfed Hughes which his father shared within the family and to others. Nevertheless Gareth Hughes maintained that his father changed his mind after his son's death and wanted to leave Yr Efail to him. That was something which their father was entitled to do, especially given the downturn in the financial position of the company.

78. It was common ground that despite that downturn, and despite the value of the shares being recorded as nil in the IHT form completed in respect of Evan Hughes' estate, the company retains land which has development value for dwellings. In the company minutes, a figure of four to five dwellings is mentioned whereas Carys Pritchard in her evidence thought there was room for up to 20 dwellings. No

valuation has been obtained so I cannot put a precise figure on it, but it is likely that there is substantial value in this land.

Conclusions on testamentary capacity

79. The focus of the doubt about the testamentary capacity of Evan Hughes as at 7 July 2016 was whether he had sufficient capacity to understand the change he was making from his previous wills which implemented this understanding and the 2016 will which departed from it in respect of 58 acres of land. This was valued by single joint expert appointed by the parties as £490,000 at the time of his death compared to £500,000 in respect of the remaining 79 aces at Bwchanan, with modest increases in both since then.

80. Mr Gomer submitted that the test should not simply be applied in relation to the understanding which Evan Hughes had with his son Elfed. The question is whether he had the ability to understand the claims not only of beneficiaries included in the will but those who are excluded. I accept that submission. Indeed such claims would include those of his son Gareth and daughter Carys in circumstances where the financial position of the company had deteriorated significantly since his previous wills and after the family understanding that they would inherit the shares in the company.

81. Moreover, in my judgment it is clear on the evidence which I have accepted, that Evan Hughes had the capacity to appreciate, and did appreciate, the claims of persons who had a claim and to judge fairly between competing beneficiaries, at least until 3 March 2016 and the meeting with Richard Williams. These included those of his son Elfed and his family, but also those of his son Gareth by referring to the money which he had put into the company.

82. It is possible that he changed his mind in the days following before his first meeting with Manon Roberts, but matters do not end there. A couple of weeks later he told Richard Williams that to sell Yr Efail would be disrespectful to his son Elfed and his family. By this stage he was suffering from moderately severe impairment. By the beginning of May he was deteriorating from week to week. On the 19 May, whilst appearing to Dr Pritchard to have capacity he also said that he was changing his will so that his grandsons would inherit the share of their father but there was "nothing complex."

83. Again, it is possible that he was deliberately saying one thing to his solicitor and another thing to his GP for some reason. However, he gave a similar reason for the will change to his cousin, who said in his statement that he thought his cousin Evan was more inclined to discuss such matters with him as he handled the paperwork in the company over many years. In his oral evidence he said that his cousin used him as a sounding board to make sure he was doing the right thing. Evan Hughes gave a similar reason for changing his will again to Dr Pritchard during the 14 June assessment when there was no mention of 58 acres going to his son Gareth.

84. There was a period of some eight weeks between the beginning of May when he was deteriorating from week to week, and the execution of the 2016 will. Thereafter, on the information before Dr Series, there was a relatively rapid decline.

On the evidence before me it is likely that this decline started a little earlier, by the beginning of May at the latest, as observed by his son. No reason was given during the process of changing his will for departing from his understanding with his son Elfed and what he said to his daughter-in-law and grandsons after their father's death, nor during this process was it mentioned that this did represent a change from that understanding.

85. Although the 2016 will was rational on the face of it, there is a real doubt about his capacity and in my judgment that doubt has not been displaced. However, I would prefer not to leave matters simply on the burden of proof. In my judgment, on the balance of probabilities, it is likely that he did not have capacity as at 7 July 2016 in three particulars, any one of which is sufficient to vitiate the 2016 will. If these particulars are taken together, that likelihood is strengthened.

86. The first is that he did not by then have the capacity to appreciate the understanding that he had had with his son Elfed over many years during which his son had looked after his stock and land for no financial reward, or the promises made to his daughter-in-law and grandsons thereafter. This is not just a case of forgetting a promise made or the provisions of his previous wills.

87. The second is that he lacked capacity to understand the extent of Yr Efail. Although a map showing the 58 acres and his other land was produced during that process, it is likely that his visuospatial impairment was such that he had difficulty in interpreting maps. It is likely that he relied more upon his memory, but that memory by 7 July 2016 was significantly impaired as shown by some of the examples set out above including confusing a field at Bwchanan for Yr Efail. While that episode, taken by itself, might be put down to a slip of the tongue or lapse of memory, and while it appears that he did have an appreciation of the extent of this when speaking to Richard Williams in March 2016, there was significant deterioration in his vascular dementia between then and 7 July 2016.

88. The third is that he lacked the capacity to understand that the changes implemented by the 2016 will were more than just those necessary to "neaten" up (in the words of his cousin Ian Hughes) his testamentary provisions following the death of his son Elfed.

89. Accordingly it follows that the 2016 will is invalid on the basis of lack of testamentary capacity. That makes it unnecessary for me to consider the other heads of claim in respect of its validity, and it was not in dispute that the proprietary estoppel claim is put in the alternative. However, in case I am wrong about that, and because the undue influence claims involve serious allegations against Gareth Hughes, I shall move on to deal with these other claims. I do so on the basis that contrary to my finding above and despite his moderately severe dementia, he retained sufficient testamentary capacity to understand the matters set out in the *Banks v Goodfellow* test.

Knowledge and approval

90. The law on knowledge and approval is not controversial and was summarised by the Court of Appeal in *Gill v Woodall* [2010] EWCA Civ 1430 and more recently

> by HH Judge Keyser QC sitting as a judge of the High Court in *Re Williams* [2021] EWHC 586 (Ch). Knowledge and approval of a will means that it represents the testator's testamentary intentions. Where a will is properly executed after being prepared by a solicitor and read over to the testator, there is a rebuttable presumption that it reflects the testator's intentions. Even where such a presumption arises, the court must consider whether there are circumstances that give rise to suspicions that the testator may not have known and approved the contents of the will and, if there are, whether a consideration of the entirety of the evidence dispels those suspicions.

91. As indicated above, it is not in dispute that the 2016 will was properly executed, after Manon Roberts went through each clause with Evan Hughes, to which he indicated approval before signing.

92. However, Mr Troup submits that there are very real suspicions that he may not have known and approved of the contents of the 2016 will. These include that his son Gareth, who stood to benefit thereunder, arranged the appointments with Manon Roberts, was present at the meeting on 11 March 2016 when instructions were given, arranged for all correspondence to be sent to his home address, telephoned Manon Roberts to discuss the draft will, and joined the meeting on 7 July 2016 immediately after its execution. By this time his father was elderly and suffering from moderately severe dementia and did not mention to Dr Pritchard that he wanted to leave Yr Yfail to his son Gareth. He had previously relied upon his daughter Carys to do his paperwork but in her absence during the weeks leading to the execution relied upon his son Gareth in this regard. The draft will was a complex document which was written in English, whereas his first language was Welsh. He would have struggled to understand the map showing his land holdings.

Conclusion on knowledge and approval

93. I accept that these circumstances taken together do give rise to suspicions that Evan Hughes may not have known or approved the contents. However, given the very clear evidence that the draft was gone through clause by clause and that he nodded his approval of each one before signing it, in my judgment it is likely that, if he had the capacity to understand, he knew of each clause and approved of it.

Undue influence

94. I turn now to undue influence. Again there is no dispute as to the principles. These were summarised by Lewison J as he then was in *Edwards v Edwards* [2007] WTLR 1387 and in *Schrader v. Schrader* [2013] EWHC 466 at paragraph 95 where the former summary was approved by Mann J as follows:

> "There is no serious dispute about the law. The approach that I should adopt may be summarised as follows:
>
> i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;

> ii) Whether undue influence has procured the execution of a will is therefore a question of fact;
>
> iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a Claimant bears in proving undue influence as vitiating a testamentary disposition;
>
> iv) In this context undue influence means influence exercised either by coercion, in the sense that the testator's will must be overborne, or by fraud.
>
> v) Coercion is pressure that overpowers the volition without convincing the testator's judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator's free judgment discretion or wishes, is enough to amount to coercion in this sense;
>
> vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness' sake to do anything. A 'drip drip' approach may be highly effective in sapping the will;
>
> . . .
>
> ix) The question is not whether the court considers that the testator's testamentary disposition is fair because, subject to statutory powers of intervention, a testator may dispose of his estate as he wishes. The question, in the end, is whether in making his dispositions, the testator has acted as a free agent.

95. Mann J in paragraph 96 of *Schrader* said:

> "It will be a common feature of a large number of undue influence cases that there is no direct evidence of the application of influence. It is of the nature of undue influence that it goes on when no-one is looking. That does not stop its being proved. The proof has to come, if at all, from more circumstantial evidence. The present case has those characteristics. The allegation is a serious one, so the evidence

> necessary to make out the case has to be commensurately stronger, on normal principles."

96. Mr Troup submits that the circumstances in this case, largely dealt with above, justifies an inference of undue influence. Under this head, he emphasises in particular that Evan Hughes was elderly, suffering moderate severe dementia and grieving for his late son. His son Gareth had taken over assisting with paperwork and dealing with professionals on his behalf and was closely involved in will making process whilst his sister was abroad. He told Dr Pritchard that the only changes were those necessary because of the death of his brother. Similarly he took the stock form signed by his father to the solicitor, even though the safeguards which the latter had required had not been carried out.

97. Mr Troup further submits that in this case there is also, unusually, direct evidence of coercion. During the hearing this included a letter, undated, but written after the first quarter of 2016 by Huw Hughes, a local skip hire businessman, in response to a request from Carys Pritchard for information as to work carried out by her brother for that business. The letter included an account of her brother saying to Huw Hughes in that first quarter that he had found out that his father had left everything to his sister, that he was not happy, and that he was going to take his father to have his will changed.

98. Huw Hughes in these proceedings signed a very short witness statement saying that Gareth Hughes had told him he was taking his father to change his will. When he was cross-examined he confirmed that this is all that was said. When his letter was put to him and the differences pointed out he said he could not follow the point being made, that it was a long time ago and he couldn't really recall. He also confirmed what Gareth Hughes said in cross-examination that there has been a financial dispute between them. In my judgment the evidence of Huw Hughes in so far as it is contested, and Gareth Hughes said what was stated in the letter regarding the will was a lie, cannot be relied upon. Mr Troup, properly and realistically, abandoned such reliance in closing submissions.

99. The first piece of direct evidence comes from Richard Williams. I have already accepted some of his evidence of his meetings with Evan Hughes and other member of the family. In respect of such meetings with him and his son Gareth in March 2016, he goes further in his witness statement and says that in his opinion Evan Hughes had been "heavily persuaded" by his son to make further provision for him. In further meetings from July 2016 onwards he says that Evan Hughes was "a passive listener" and it was his son who conducted the meetings and was having more influence in his father's affairs. When later on in 2016 in such a meeting Gareth Hughes raised the issue of transferring some shares in the company his father appeared "bewildered."

100. When he was cross-examined he expanded upon his witness statement. It was put to him that there was no mention in his statement of bullying or undue influence, to which he replied that if Mr Gomer could not understand that that is what his statement meant then he was in the wrong job. I intervened at that point to say that counsel was putting his case and that he should confine himself to answering

questions. Despite that, I had to make similar interventions on two subsequent occasions during his evidence.

101. He said that he had made in respect of each meeting a one word or one phrase note in Welsh to remind himself of the tone of the meeting. These included gwyliadwrus (cautious) and pryderus (uneasy) in the meetings in Spring 2016. When pressed for details of bullying he said that Gareth Hughes was forceful and said to his father that the latter owed a duty of care to him. When pressed for details of undue influence, he said Gareth Hughes was running the company down and although making no request for money was pressing for more provision in the will. When asked why he did not report this, he said there was no hotline and added that he regarded Evan Hughes as strong and stable and thought he would stick to his intentions.

102. He then volunteered his view of what was right and wrong and said that Gareth Hughes would not know one field of the land from the other and suggested that he should be asked whether he had ever walked the fields. When it was put to him that as the accountant for Evan and Elfed and Geraint Hughes he was giving passionate evidence, he maintained that he was professional and independent.

103. His evidence was of fact and not of expert opinion. I give due regard to his professional status but I was left with the clear impression from his exchanges with counsel that this part of his evidence crossed the line from dispassionate recollection into a passionate one. That does not necessarily mean that it is not accurate but it means I should be cautious about accepting this part of his evidence. In my judgment when properly analysed it does not show that the line between persuasion and coercion was crossed and does not amount to direct evidence of undue influence, although it may be taken into account in deciding whether such influence may properly be inferred.

104. Gareth Hughes does not accept this part of Richard Williams' recollection. However, I accept this part of the evidence to the extent that it is likely that Gareth Hughes, being aware of the understanding in the family as to shares in the company and the land, being aware that his father had previously attempted some equality between his children in providing homes and in his testamentary provision, and being aware of the downturn in the financial situation of the company, did seek to persuade his father to make what he saw as a more equal provision in a new will.

105. The only other piece of direct evidence now relied upon is that of Carys Pritchard who says that when she discovered that the power of attorney in her favour had been revoked and a new one granted in favour of her brother, she asked her father about it and he replied "they told me to do it." I accept that evidence, which is to be taken into account on the issue of undue influence. In my judgment it is not a strong piece of evidence, given that her father had forgotten giving instructions for the letter to his daughter.

Conclusions on undue influence

106. The real question in this case in my judgment is whether legitimate persuasion crossed the line into coercion or fraud within the meaning of the authorities. In my judgment it cannot be said that the facts are not consistent with any other hypothesis. One other plausible hypothesis is that having until March 2016 stuck to his intentions, he then realised with the worsening financial position of the company that in order to achieve a more equal distribution between his children as he had sought to do in the past, some further provision for his son and daughter should be made.

107. Accordingly in my judgment the claim of undue influence is not made out. Again, I would go further and say that it is unlikely, given the strong character which I accept that Evan Hughes retained in July 2016 despite his mental and physical frailties, that his own volition was overcome in making the 2016 will, even on the basis of "drip drip" approach or for the sake of a quiet life.

Proprietary estoppel

108. Finally, I deal with the claim of proprietary estoppel. In order to establish such a claim Gwen and Stephen Hughes must show that Evan Hughes made it clear that his land would be left to his son Elfed and that the latter relied on that representation to his detriment (see *Thorner v. Major* [2009] UKHL 18). Detriment can include non-financial detriment as long as it is substantial (see for example *Davies v. Davies* [2016] EWCA Civ 463). It is not an exercise in forensic accounting however, and the court must stand back and look at the matter in the round (*Gillett v. Holt* [2001] Ch 210 at 232).

109. In evaluating the extent of detriment, benefit must be taken into account if it is enjoyed as a consequence of the reliance. If the benefit would have been received in any event, it should not be taken into account (see for example *Chan v. Leung* [2003] 1 FLR 23, where a substantial gift of monies was disregarded in assessing the extent of detriment because it had been made out of natural love and affection).

110. As for the proper outcome if proprietary estoppel is established, the court has a wide discretion as to what remedy to grant. However, there are two clearly established principles. The first is that the maximum extent of relief is what is needed to honour the promise. Second, expectations arising from the promise will not necessarily be honoured, and the court will not grant relief which is out of all proportion to the detriment.

111. In *Davies*, Lewison LJ stated at paragraph 66:

> "In some cases it may well be that the impossibility of evaluating the extent of imponderable and speculative non-financial changes (for example life-changing choices) may lead the court to decide that relief in specie should be given."

112. More recently the Court of Appeal in *Habberfield v. Habberfield* [2019] EWCA Civ 890 stated, in the lead judgment of Lewison LJ at paragraph 69, that if parties have made a bargain, which one party has kept, then in the absence of

countervailing factors, it would be unethical or unconscionable for the other party not to keep his side of the bargain.

113. I have already made some findings as to the understanding which Evan and Elfed Hughes had over many years as to what would happen to the land of the former after his days. It is true that some of the witnesses understood this in terms simply of the then current testamentary intention of the former. But as between father and son I am satisfied that their understanding went far beyond this. Particularly telling in this regard is the evidence of Gwen Hughes in her witness statement that her late husband always used to dismiss her when she told him, in the context of tending to his father's stock and land, that he was spending too much money on his father. Her husband would respond in Welsh "da ni'n dallt ein gilydd," which in English means "we have an understanding together." She said that she knew that the understanding was that her husband would inherit the land. When she was cross-examined about how she knew, she replied that her husband told her that his father said that the land would be his.

114. That evidence is supported by Stephen Hughes who heard such conversations between his parents. He said he heard such conversations many times ever since he can remember. His mother would ask why they were paying bills in respect of her father-in-law's land and her husband replied that it was beneficial as he would own it one day.

115. I accept that evidence. In my judgment there was a sufficiently clear representation by Evan Hughes to that effect over many years.

116. As for reliance, it is not in dispute that Elfed Hughes lived for farming, worked very hard and successfully at it, maintained very high standards, and produced prize winning stock. This was clear from all the evidence including recordings of two television programmes in which he featured and which I have watched. Mr Gomer submits that that is why he farmed his father's land and not because of any promise on that part of his father. That may have been a part of it. However he maintained his father's stock and land for some 38 years. When he purchased farmland of his own in 1999, it was next to his father's farm so that he could work on both together. He built a bridge to link the two and a large cattle shed to keep his own and his father's cattle. Again, the conversations which he had with his wife as set out above are telling and in my judgment in that context it is likely that he did so also in reliance upon the representations.

117. The financial detriment relied upon is the value of such work, which the single joint agricultural expert Mr McVicar values at £158,415 on the craft rate or £181,875 at the managerial rate. In my judgment the latter is appropriate in this case given that Elfed Hughes was in charge of the farm work on his father's land. On top of that, he paid staff to work on his father's land as well as his own. Mr McVicar calculates that extent of such at 2,114 hours which he values at £378,802. Moreover he also paid by far the majority of expenses and for machinery. Only limited records still exist, but the respective farm accounts for the three years prior to his death and the existing invoices between 2008 and 2015 give a good indication that such payments were substantial over many years, as also indicated by his wife querying such expenses. There is also the end of tenancy claim in respect of

Rhosbeirio, the cost of the bridge and cattle shed constructed by him on his own farmland, and his son Geraint's pay cut in 2012.

118. The non-financial detriment relied upon comprises the very long hours he worked, the lack of any holidays and the sacrifice of his family life. In my judgment it is right to take some of this into account, but also to recall that he was working for himself as well and given his personality it is likely that he would have worked long hours, although probably not as long, even without his father's land and stock.

119. As for benefits, in my judgment the gift of Bwchanan farmhouse in 1989 should not be taken into account in evaluating detriment. Similar provision was made to his other children early in their adult lives in order to set them up, as Gareth Hughes to his credit accepted in cross-examination.

120. Elfed Hughes was also able to run his stock on his father's land, but the reverse is also true. Before 1989 his father charged him rent for this, as shown in his 1987 and 1988 accounts and confirmed by his widow in cross-examination. Thereafter in my judgment, the arrangement was mutually beneficial and is a neutral factor in evaluating detriment. The detriment, which I accept, goes far beyond that and amounts to unpaid work over very long hours over many years, together with substantial expenses over the same period, and in particular the wages of staff and expenses of husbandry and machinery.

Conclusion on proprietary estoppel

121. In my judgment, standing back and looking at the matter in the round, the detriment was such that the expectation of Evan Hughes in the understanding that he had with his son has been fulfilled. It is just and proportionate that the corresponding expectation of his son should also be fulfilled. Accordingly, if the 2016 will is valid, Yr Efail is nevertheless subject to an equity in favour of Elfed Hughes' estate.

122. I am very grateful for the assistance I have received from the parties and their legal representatives in this difficult and sad case, and to counsel for their thorough representations and submissions. It was helpfully agreed that any consequential matters which cannot be agreed could, in the first instance at least be dealt with by written submissions. I invite the parties to submit a draft order agreed if possible and any such submissions, together with a request for a listing for further oral submissions if deemed necessary, within 14 days of handing down this judgment.