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Case No: BL-2022-000616

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 17<sup>th</sup> January 2025

**Before :**

**His Honour Judge Cadwallader**

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**Between :**

**Cameron Stuart Allan**  
**- and -**  
**Alistair Robert Allan**

**Claimant**

**Defendant**

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**Tim Calland** (instructed by **Birketts LLP**) for the **Claimant**  
**Caroline Shea KC** and **Michael Ranson** (instructed by **Barker Gotelee**) for the  
**Defendant**

Hearing dates: 12-16 November 2024, 17 January 2025

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**JUDGMENT**

**His Honour Judge Cadwallader:**

1. This is my reserved judgment following the trial of this action over four days commencing on 12 November 2024.

**Background**

2. This is a partnership dispute between two brothers, Cameron (“Cam”) and Alistair (“Ali”) Allan over their farm at Kings Farm, Cambridgeshire. Cam was born in 1963, and Ali was born in 1968. They have a sister, Elizabeth (“Liz”), who is not involved in farming. She is the eldest sibling. Cam is seriously ill, although he was able, with small accommodations, to take a full part in the trial before me.
3. They come from a farming family, and Cam and Ali have farmed all their working lives. Their parents were Stuart and Cecily Allan, and the family originally lived on a 170-acre farm in Rugby, Warwickshire. In about 1978 they moved to a farm in North Taunton, Devon. In about 1988, however, Stuart and Cecily Allen bought what was then known as Kings and Hundreds Farm, which has since grown into what is now known as Kings Farm. Between them, the family carried out a number of farming activities, including dairy (until about 1997), sugar beet, baling straw and a substantial potato-growing operation. Business was profitable. Cam and Ali and their parents carried on the farming business together in partnership under the name ‘Allan Partners’ under an unwritten partnership agreement. Their parents together had one third of the profits, and Cam and Ali each had another third.
4. In a series of transactions between 1988 and 1998, their parents transferred most of the farm land to Cam and Ali, and it is common ground that the farm land is owned by Cam and Ali personally, and that it is not partnership property.
5. Between 2000 and 2010 Cam and Ali bought additional land away from the farm, in their own names, at Mepal and at Somersham. Part of the Somersham land is used by Cam for a wind turbine built and operated by a company of his, Case NRG Ltd, and part by Ali for a wind turbine built and operated by a company of his, A L Power Ltd.

6. In about 2000 Stuart and Cecily Allan stepped back from working on the farm, although they remained in partnership with their sons, and Stuart helped out from time to time.
7. From 8 May 2008 the affairs of the partnership between the four of them were further regulated for the first time by a Partnership Deed of that date. The Partnership Deed treated Stuart and Cecily Allan together as one partner. The profit shares remained as before. After reciting that the partners wished the existing unwritten arrangement to continue in general, but were entering into the deed to record some specific matters of agreement which they wished to be formally recorded, the Partnership Deed provided as follows, so far as relevant.

**“1.**

**Definitions and interpretation**

**1.1**

The clause headings in this Deed do not form part of this agreement and are not to be taken into account in its construction or interpretation...

**2.**

**Commencement and term...**

**2.2**

**Term**

Subject to the provisions set out below and unless determined by law or by agreement, the Partnership will continue while any two or more Partners are alive.

**3.**

**Profits and losses**

Profits and losses shall be divided equally between the Partners or in such other proportions as the Partners from time to time agree.

**4.**

**Assignment and nomination**

Any of the Partners may by deed or will:

**4.1**

assign the whole or any part of his share in the capital and profits of the Partnership to any one or more of the surviving Partners; or

**4.2**

assign the whole or any part of his share in the capital and profits of the Partnership to such other persons as he sees fit provided that he first obtains the consent of all the other partners to do so. No such assignment is to effect a dissolution of the Partnership.

**5.**

### **Withdrawal**

Any Partner may at any time withdraw any part of his capital in the Partnership and/or his assets (including land and machinery) used by the Partnership. For the avoidance of doubt, any Partner may so withdraw whether or not he is continuing to be a Partner provided that he gives not less than six months' notice in writing of that wish to the other partners.

### **6.**

#### **Continuance of Partnership**

The death of a partner leaving two or more partners surviving will not terminate the Partnership.”

8. Cecily Allan died on 20 April 2010. Under her will dated 7 March 2008, in the events which happened, she appointed Stuart her executor and universal beneficiary. (Her will provided that if Stuart did not survive her, she left her share in the partnership to Cam and Ali equally.) The partnership continued, with equal one-third shares divided between the remaining three partners.
9. Stuart made a professionally drawn will on 2 August 2013. After appointing his three children his executors, he left Kings Farm House (in the events which happened) to Ali and his sister Liz in unequal shares with an option to Ali to buy his sister out; and he left the rest of his freehold property to Ali. He also gave “free of Inheritance Tax all my share and interest in the partnership known as Allan Partners including partnership assets” to Ali. He left the residue of his estate to his three children in equal shares.
10. Stuart made what was in the event his last will, which was also professionally drawn, on 7 June 2016 (“the 2016 will”). It revoked his 2013 will. Again, after appointing his three children his executors, he left Kings Farm House to Ali and his sister Liz in unequal shares with an option to Ali to buy his sister out. He left certain land to Ali too, if he survived him. By Cl. 6(a) it was provided that

“I GIVE free of Inheritance Tax all my share and interest including my capital in the partnership known as Allan Partners including partnership assets to ALISTAIR PROVIDED HOWEVER if ALISTAIR shall die in my lifetime leaving a child or children who shall attain the age of eighteen years such child or children shall stand in the place of ALISTAIR and take equally between them if more than one my share and interest in the partnership,”

with a gift over to such of Liz and his daughter in law Elizabeth as should survive him if more than one in equal shares. He again left the residue of his estate to his three children in equal shares.

11. Cam and Ali agree that they agreed to reduce their father's share to 10% in 2018, but until recently Ali did not accept that Stuart himself had agreed to such a reduction. Ali now accepts that he did, however, and it is not in issue that it was so reduced with effect from the accounting year ending 31 March 2017.
12. Part of the business of the partnership was what has been called 'the straw business,' a baling operation. The partnership had a written contract dated 15 March 2016 with a company called EPR Ely Ltd to provide 5,000 metric tonnes of straw a year for an initial term of four years from 1 August 2016, which would renew automatically for a further four years from 1 August 2020 unless either party gave notice to the contrary not later than 1 August 2019. It is not in dispute that the straw business was a long standing and important part of the partnership business, but involved a degree of financial risk and a lot of hard work, which Ali mostly did. On 29 July 2019 Ali (but not, at least on the face of things, Stuart or Cam) gave notice to prevent the term from renewing, so the contract ended on 1 August 2020. In 2020 Ali's own company, A.L. Sheeting Ltd, entered into a new straw contract with EPR Ely Ltd on its own account and for its sole benefit, although continuing to use the partnership's balers, labour, fuel and string. There is an issue between the parties over whether Cam agreed to this. Ali says he did. Cam says he did not, and that Ali should account to the partnership for the profit.
13. For some time, there had been discussions about Cam's retiring. On 29 May 2020 he was diagnosed with cancer. The effect of the discussions about his retirement is in issue.
14. Stuart Allan died on 3 July 2020. The parties then became aware of the terms of his 2016 will. Probate of the 2016 will was on 29 March 2023 granted to Liz and Ali out of the Principal Probate Registry. The gift of the share in the partnership in Cl. 6 of the 2016 will gave rise to an issue between Cam and Ali: Ali contends that in consequence he was entitled, not only to his own one third share of the profits, but also to Stuart's share of the profits, which he now accepts was 10% (but had previously claimed was one third); while Cam's

case is that by reason of his death Stuart had no continuing share of profits to leave to Ali whatever the terms of his will.

15. Relations between the two brothers deteriorated as they disagreed over the straw business, their respective shares of profit and Cam's retirement from the partnership. Ali contended at that stage that Cam had already retired and was no longer a partner at all, a contention which he has since abandoned for the assertion that the partnership continues, and Cam is not entitled to leave or determine it.
16. These proceedings were commenced by Cam on 7 April 2022, seeking a declaration that he and Ali were entitled to partnership profits in equal shares; that the partnership had been dissolved by the service of these proceedings, alternatively an order that the partnership should be dissolved, and in any event an order that the partnership's affairs should be wound up; an order that Ali compensate the partnership for the profit it should have made from the straw business, or account for the profit received by him or his company from diverting the business; and an order for the sale or partition of non-partnership land which they jointly owned; with associated relief.
17. The re-re-amended Defence and Counterclaim (last amended on the first day of the trial), alleged among other things that following Stuart's death, Cam was entitled to 45% of the profits, while Ali was entitled to 55% of them (it being accepted by then that Stuart's share had reduced to 10% before his death); denied that Cam could dissolve the partnership by notice or that he was entitled to an order for dissolution (by then, accepting that Cam had not retired, but asserting that even before his late father's death that Ali had been given authority to make all day-to-day decisions in the running of the partnership); denied the allegations about the straw business and any breach of his partnership obligations; and claiming an order for an account of benefits received by Cam pursuant to the partial implementation of an agreement in principle as to his retirement and a declaration that certain properties were assets of the partnership; and, if it had after all been dissolved, an order giving him permission to buy out his brother from the partnership and from the jointly owned land; together with other relief.

## Issues

18. An agreed list of issues was provided for the second day of the trial in the following terms.
1. Is the land at Mepal registered at HM Land Registry with title number CB352960 (line 4 in paragraph 21 of the amended particulars of claim) beneficially owned by Cam and Ali in their own right in equal shares, or for the partnership?
  2. In what proportion are Cam and Ali entitled to share in the profits of the partnership? More specifically, has Ali succeeded to Stuart's continuing right to a share of the profits under Stuart's will?
  3. Is Ali liable to account to the partnership for the profits made from the straw business since it was moved to A.L. Sheeting Ltd or otherwise to compensate it for the profit it ought to have made from the same?
  4. Was the partnership dissolved by service of the Particulars of Claim?
  5. If it was not, should it now be dissolved by court order? More specifically:
    - a. Has Ali been guilty of conduct which is calculated to prejudicially affect the carrying on of the business?
    - b. Has Ali wilfully or persistently breached the partnership agreement or otherwise conducted himself in such a way that it is not reasonably practicable for Cam to carry on the business in partnership with him?
    - c. Is it just and equitable in all the circumstances to dissolve the partnership?
  6. Does the partnership have a tenancy over the land at Kings Farm, being the land conveyed to the parties in the conveyance dated 29 September 1988 and made between (1) Reed Pensions Nominees Ltd (2) Stuart and Cecily Allan and (3) Alistair and Cameron Allan as rectified by a Deed of Rectification dated 10 March 1998 made between (1) Stuart and Cecily Allan and (2) Cameron and Alistair Allan?
  7. What consequential relief should be ordered? (It is agreed that consequential relief should be decided after the answers to the other questions have been decided.)
19. A number of qualifications were made to this list, however, in the course of the trial.

- (1) The particulars of claim alleged that the partners were entitled to capital in the proportions which they agreed they had contributed (rather than equally under Section 24(1) Partnership Act 1890). This was not admitted. The parties agreed that I should not deal with this issue, but it should be a matter for accounts and inquiries if any.
- (2) The digger said to have been appropriated by Cam to his own purposes (a Hitachi ZX LCN digger) was the sole survivor of the list of items for which Ali had asked the court to direct an account. This remains a live issue. It was accepted that the digger was to be part of Cam's retirement package as it was being discussed in 2019 and into 2020; that Cam still has it; and that Cam has paid a sum of money for its use. The parties agreed that the rental for such a digger would be £550/week. The question remaining is whether, as Cam contended, he should pay for the weeks he actually used it, or, as Ali contended, he should pay for the weeks he had it available for use. The question of depreciation, although pleaded, was not pursued on behalf of Ali.
- (3) Paragraph 27 of the re-re-amended Defence and Counterclaim (an amendment made on the first day of trial by consent) alleged that the partnership had a written tenancy protected by the Agricultural Holdings Act 1986 of land at King's Farm comprised in a Conveyance dated 29 September 1988 as rectified by a Deed of Rectification dated 10 March 1998. A potential contention on behalf of Ali that the tenancy agreement extended to the land mentioned at lines 2 and 3 of the table at paragraph 21 of the particulars of claim was not sought to be pursued. I was invited on behalf of Ali to make a declaration as to its extent according to its terms and the Deed of Rectification, declare that it was protected by the 1986 Act, and to declare that it is partnership property, having been granted by Cam and Ali together to themselves and their parents. The existence and validity of the tenancy agreement was not challenged by Cam, whose signature appeared upon it, though he declined to admit it on the ground that he did not remember it; and it was accepted in closing that there was no evidence that it had ever been terminated. There was no objection to my making a declaration if I made that finding and thought it appropriate to do so, notwithstanding there was no pleaded claim for one.



- (4) The parties agreed in closing that I should not, in this judgment, make any decisions in respect of consequential relief, including not immediately forcing an election on Cam between any available remedies in relation to the straw business. I am content to adopt that approach, since it allows the parties some freedom to reach agreement.
- (5) Cam had alleged that eight plots of land at Mepal and Somersham listed in the table at paragraph 21 of the particulars of claim were jointly owned by Ali and him personally, rather than being assets of the partnership. Ali's amended defence and counterclaim agreed that properties listed as 1 to 3 on that table were jointly owned, but averred that the property listed at 4 was purchased using monies belonging to the partnership and was accordingly an asset of the partnership. The re-amended defence and counterclaim conceded that the properties numbered 5 to 8 were also jointly owned rather than being partnership property, but still alleged that the land numbered 4 was partnership property. That remained in issue at the opening of the trial and appeared in the agreed list of issues. The property listed at 4 in the table is the 55 acres of land at Mepal registered under Title Number CB352960. On the last day of the trial, in closing submissions, I was informed that Ali now also conceded Cam's claim that the 55 acres of land at Mepal registered at HM Land Registry under title number CB352960 belongs to them as tenants in common in equal shares personally, and is not a partnership asset. That disposed of issue 1.

### **Witnesses**

20. Cam was generally an honest witness, but his memory of past events was often poor. His clinging to the idea that the letter of wishes to which I refer below related to Stuart's 2016 will, in the face of clear reasons why it could not have done, was wrong-headed but not dishonest. I reject the submission that he was tailoring his evidence to his case.
21. I did not find the evidence given on behalf of Cam by Rowley Barclay, a land agent, to be of substantial assistance: his recollection was confused and evidently inaccurate. The Court might have been more assisted by evidence from his superior, who was not called. I draw no adverse inference from that.

22. Ali was, I accept, largely an honest witness, but I formed the view that he did tend to tailor his evidence to his case at points, and where he was unsure of where things were going, he could be evasive. He appeared to have a firm and vehement belief that he was in the right when he might have had reason to be less confident of that. At some points, I have been unable to accept his evidence as truthful.
23. Nothing turned on the evidence of Shaun Langley on behalf of Ali. I deal with the evidence of Justin Long of EPR Ely Limited below.
24. I turn therefore to consider the issues in turn, in what I take to be a logical order. It is to be understood that this was a case with numerous factual disputes, and arguments were put forward in a number of ways: I have taken all of that into account, even though, in the interests of brevity in expressing my reasons for reaching the conclusions which I have, I have not referred to them all in the body of this judgment.

**Land at Mepal registered under Title Number CB352960: issue 1**

25. It is no longer in issue that the 55 acres of land at Mepal registered at HM Land Registry under title number CB352960 belongs to Cam and Ali as tenants in common in equal shares personally, and is not a partnership asset.

**Term of partnership and dissolution by service of the claim: issue 4**

26. A partnership can either be for an agreed fixed term or be at will. A contract of partnership gives rise to a partnership at will unless an agreement to the contrary is proved: *Moss v Elphick* [1910] 1 KB 846, 849; see also *Abbott v Abbott* [1936] 3 All ER 823, 826 (a case in which the agreement provided that the death or retirement of partner should not terminate the partnership).

Section 26(1) Partnership Act 1890 provides,

“Where no fixed term has been agreed upon for the duration of a partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners”; and by Section 32 of that Act it is provided that “subject to any agreement between the partners, a partnership is dissolved... if entered into for an undefined time, by the partner giving notice to the other or others of his intention to dissolve the partnership.”

In the present case there is an express agreement that ‘the Partnership will continue while any two or more Partners are alive’ (Cl. 2.2) and that ‘the death

of a partner leaving two or more partners surviving will not terminate the Partnership' (Cl. 6). In my view, that gives rise to a partnership for joint lives, rather than a partnership at will.

27. On behalf of Cam, however, the contrary is argued, on the following basis. If Cl. 2.2 of the Partnership Deed prevented a partner from leaving the partnership, then Cl. 6 would be otiose. So Cl. 2.2 must be directed at something else. Its true function is to prevent the departure of one partner from bringing about a general (as opposed to a technical) dissolution, which would require the partnership to be wound up and would destroy the business. In any event, it is expressly subject to the later provisions, including not only Cl. 6, but also Cl. 5. Cl. 5 allows any partner at any time on six months' notice to withdraw any part of his capital in the partnership or assets used by the partnership, whether or not he is a continuing partner. This provision would be unnecessary save where the partners have not agreed to that partner's leaving (if they had agreed to his leaving, they would surely agree terms as to capital and assets). The partnership deed does not require the partners to work in the partnership, or leave their capital or assets in it. It would be very odd, and contrary to the interests of the other partners, if such a partner had no way of leaving, and thus ending their entitlement to share in profits. Against the background that before the Deed of Partnership, the partnership had existed as a partnership at will for at least 20 years, a term is to be implied that a partner is entitled to leave voluntarily.
28. I am not persuaded by this argument. The natural reading of Cl.2.2 is that it prevents a partner's leaving. If that made Cl. 6 otiose it would not follow that it was Cl. 2.2 which was directed at something else: as a matter of logic, that might equally be Cl. 6. In fact it is Cl. 6, not Cl. 2.2, which is directed at preventing a dissolution on death.
29. Cl. 5 is not provision for a partner's departure but for his withdrawal of his share of partnership capital, and of his land used by the partnership. The reference to capital is to the aggregate of the sums contributed by the partner concerned, a sum fixed by the agreement of the partners: see Lindley & Banks, *Partnership*, 21<sup>st</sup> ed., 17-01. Absent agreement, a partner is not entitled to withdraw any part of his capital for so long as he remains a partner: *ibid.*, 17-18. The provision is therefore important, so far as it deals with

continuing partners, and goes some way to mitigate any hardship in the continuation of the partnership for joint lives without provision for retirement or dissolution. It also applies where he is not continuing as a partner. As regards capital, it is consistent with the provisions which would apply on a general dissolution (the part of the provision as regards land being perhaps redundant in that case, unless there were to be an order or agreement for a buy-out and disagreement over whether land had to be left in in that event). In the case of departure by agreement, the partner leaving would not need the remaining partners' agreement to his withdrawing capital or the use of his assets, because this clause provides for it in advance. It would not be unnecessary in any of those cases. Nor can a right to retire be spelled out from this reference to a person's not continuing to be a partner.

30. While the Partnership Deed does not require a partner to work in the partnership, or leave his capital or assets in it, the same applies as regards each other partner too. A partner who took all his labour capital and assets away might well find that the others did so too, or that they negotiated an agreement for his departure. I do not regard that as odd.
31. It does not follow from any of this, or from the partnership's having been a partnership at will before the Partnership Deed, that a term is to be implied that a partner is entitled to leave voluntarily. Moreover, the implication of such a term would be contrary to (at least) Cl. 2.2. No such term can be implied.
32. It follows that the partnership cannot be dissolved by notice, and that it was not dissolved by service of the claim or particulars of claim. That determines issue 4.

### **Partnership profits: issue 2**

33. In the end, Ali accepted by the date of trial that his father's share of profits had been reduced by agreement from one third to 10%, so that the only remaining issue as to partnership profit was whether he had succeeded to that share of profit under his late father's will. As to that, Cam accepted that his brother was entitled to his father's partnership share, in the sense of his right to undrawn profit and his entitlement on the technical dissolution occasioned by

his death, but he disputed that Ali was entitled to his father's former 10% share of profits in relation to profits arising after his death and continuing.

34. Ali contends, however, that on its true construction the Partnership Deed contemplates the assignment, not merely of Stuart's existing profit and capital accounts, but of a continuing right to a 10% share of the profits generated after his death.
35. On its face, that is a surprising proposition. The Partnership Deed refers only to the assignment of the whole or any part of a partner's share in the capital and profits of the Partnership by deed or will. The meaning of references to a partner's share varies according to context and circumstance: see, for example, *Ham v Ham* [2013] EWCA Civ 1301 at [24]. I do not need to engage in the subtleties of the discussion around this exemplified in, for example, Ch. 19 of Lindley & Banks, *Partnership*, 21<sup>st</sup> ed. It is uncontroversial that it involves a right to share in the profits in the present case, as it does generally. But that usually ends on death. It is clear, and I understood it to be equally uncontroversial in the present case, that ordinarily what passes on death is the partner's proportion of the partnership assets after they have been all realised and converted into money, and all the debts and liabilities have been paid and discharged. As Lord Lindley observed:

“What is meant by the share of a partner is his proportion of the partnership assets after they have been all realised and converted into money, and all the debts and liabilities have been paid and discharged. This it is, and this only, which on the death of a partner passes to his representatives, or to a legatee of his share; which under the old law was considered as bona notabilia; which on his bankruptcy passes to his trustee...”: see Lindley & Banks, *Partnership*, 21<sup>st</sup> ed. 19-08.

That reflects a proper application of Sections 39 and 44 Partnership Act 1890.

36. In the event of a general dissolution, too, each partner is ordinarily entitled to insist on the partnership assets being applied towards payment of the firm's debts and liabilities and a division of any surplus proceeds: see Lindley & Banks, *Partnership*, 21<sup>st</sup> ed., 19-18 ff. If the death, retirement or expulsion of a partner were to cause a general dissolution, the position would be the same.

“In the absence of any express provision in the partnership agreement or in an ad hoc agreement between the partners, the entitlement of the deceased or outgoing partner in respect of his share will, in the normal way, strictly be represented by his proportionate share in the net proceeds remaining after all the partnership assets have been sold and

the partnership debts and liabilities paid and discharged.” Lindley & Banks, *Partnership*, 21<sup>st</sup> ed., 19-20 – 19-22.

37. None of the above imports a right to share in profit continuing after the dissolution (general or technical) occasioned by death. Section 42 of the Partnership Act 1890 provides that,

“Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such a share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets.”

That is inconsistent with any continuing right otherwise to share in profits after death.

38. Whatever is meant by a partnership share, it is ordinarily freely assignable, and the partnership agreement does not need to say so. Such an assignment does not make the assignee a partner without the others’ consent: see Section 31 Partnership Act 1890 and Lindley & Banks, *Partnership*, 21<sup>st</sup> ed., 19-78 to 19-92. The assignee acquires the right to receive the share of profits *to which the assignor would otherwise be entitled* under s31 of the 1890 Act. An assignor obviously cannot assign more than he has. If his right to profits ceases on death, an assignment on death cannot make it last longer.

39. Ali contends, however, that on its true construction the Partnership Deed contemplates the assignment of a continuing right to a 10% share of the profits. Neither Cl. 4.1 nor Cl. 4.2 distinguishes between assignment by deed and assignment by will and each applies in either case. Since both contemplate assignment of a partner’s ‘share in the capital and profits of the partnership’, it might be argued that both contemplate assignment of a share in profits on death, just as much as in life; and since they do, it must follow that it was intended that a share in profits should continue after death. But the argument is not persuasive. The right is to be understood to be to assign whatever share in the capital and profits of the partnership the assignor may have, not just profits, and not just on death.

40. That is not the basis on which Ali's argument proceeds. It is argued instead that the existence of a continuing right to profits after death is the only way to make sense of the requirement under Cl. 4.2 that where a partner assigns to a third party (a non-partner), he must obtain the consent of all the other partners to do so. If his continuing right to receive profits were not included in such assignment, he could simply retire, be paid out his share, and transfer the value he received for his share to a third party. But, it is argued, that is not the situation to which Cl 4.2 is directed: rather, it is directed to the situation where a partner wishes in effect to appoint another partner in his place, taking over his capital, profits and entitlement to future profits as well. It follows that this is also what is contemplated in Cl. 4.1, which uses exactly the same terminology to describe what is to be assigned to another partner, namely his 'share in the capital and profits of the partnership.' So any partner might, by deed or will, give his share to another partner, including the right to future profits. Indeed, this is what happened when Cecily died, because her combined share of the capital and profits, together with her joint right to a third of the profits passed to Stuart. Thus, the partners operated on the basis that the right to future profits was a right that was capable of being gifted by deed or will.
41. I am unable to accept this argument. A partner assigning his share during his life to a fellow partner has a share of profits which will continue during his life. If it is just an assignment, it will not make the assignee any more of a partner than he was before the assignment: he is a partner already in his own right; the effect would be to give him the assignor's share of profits only for as long as it lasted, that is, until the death of the assignor (and if the assignee died before the assignor, there would presumably be a technical dissolution at that point). If it were to be regarded, instead, as imposing upon the other partners a *variation* in the profit shares, such that the assigned profit share continued, not for the life of the assignor, but for the life of the assignee, it seems to me that much clearer words would be required than are to be found in the present case.
42. A partner assigning his share during his life to a non-partner may do so if he first obtains the consent of all the other partners to do so. Why is consent required here? It is argued on behalf of Ali that this is because the provision contemplates making the assignee effectively a new member of the partnership, for which such consent would be required as a matter of the

general law. But it does not follow. In the first place, the right to the share of profit would still not extend beyond the life of the assignor, absent clear words to the contrary; so the assignee would not be like a new partner, whose right to profit share would extend to his own death or any earlier dissolution. In the second place, the fact that consent is required to create a new partner does not mean that where consent to an assignment to a non-partner is required, that entails their becoming a partner. Moreover, it seems to me that there would be nothing odd in members of a partnership, particularly perhaps a family partnership, wanting the right to prevent a stranger coming in to (for example) share their profits (perhaps without having to work for them) - even if the stranger were not entitled to his own account until a dissolution, and even if the stranger did not thereby become a partner. Clearer words would be required than are to be found in the present case.

43. If that is the position on a lifetime assignment, then the same is true on an assignment by will, save that there is in that event no profit share to assign. It does not make any difference that clause 4 does not distinguish what may be assigned during life or by will. That is a feature of the drafting. But if content had to be ascribed to the reference to profits on an assignment on death, it would plainly encompass any undrawn profits of the deceased partner.
44. No doubt a partnership agreement could, by suitable wording, provide for an assignment by will of a partnership share which did give a right to the same share of profit as the deceased partner had, by introducing a new partner, with the consent of the other partners. Such a case was *Thomson v Thomson* [1962] SLT 109 (HL). But that was a case in which much clearer words were used than in the present case.
45. I do not accept that what happened when Cecily died is any guide to the true construction of the Partnership Deed. What happened and why is not altogether clear on the evidence in any event. But it is not surprising, since she and her husband were treated as a single partner together under the Partnership Deed, that Stuart was treated as retaining a one third share. It certainly does not amount to evidence that the partners operated on the basis that a right to continuing future profits survived death if gifted or assigned by will.



46. The question of the status of such a right, if not assigned by will, was not canvassed before me: would it arise or have arisen; or would it only arise if there were an assignment by will? The question was raised but not explored whether this was a gift by will of an asset forming part of Stuart's estate, or an assignment pursuant to Clause 4 of the Partnership Deed. In view of the conclusion to which I have come I do not need to consider these points.
47. I conclude that Ali did not acquire a right to an additional 10% of profits after his father's death, and that the brothers are therefore entitled to equal shares of profit from the date of Stuart's death. The effect of the will is therefore to entitle Ali to any of his father's undrawn profit accrued at the date of his father's death, but not to his father's share of profit going forward. That disposes of issue 2.

### **Land at King's Farm: issue 6**

48. I am satisfied by the documentation before the Court that the partnership had a written tenancy of land at King's Farm comprised in a Conveyance dated 29 September 1988 as rectified by a Deed of Rectification dated 10 March 1998. Its existence and validity were not challenged. No positive case to the contrary was raised although it was not admitted. There was no evidence that it had ever been terminated. It is plainly protected by the Agricultural Holdings Act 1986. I will declare accordingly. That disposes of issue 6.

### **The straw business: issue 3**

49. A partner is under a duty to display complete good faith towards his co-partners in all partnership dealings and transactions. That is reflected in Section 28 of the Partnership Act 1890. Partners are obliged not to benefit themselves at the expense of the partnership. That is a particular branch of the general duty of good faith: see Lindley & Banks, *Partnership*, 21<sup>st</sup> ed., 16-50. Section 29 of the Partnership Act 1890 puts it on a statutory footing. It provides as follows:

- “(1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property name or business connexion.
- (2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the

affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.”

This duty cannot be avoided by sheltering the benefit or profits in a company or other third party: see Lindley & Banks, *Partnership*, 21<sup>st</sup> ed., 16-52. A partner may be accountable in this way where he or she exploits an opportunity which comes to him or her only as a result of his membership of the firm: *ibid.*, 16-77.

50. I accept that on the undisputed facts, Ali must be accountable to the partnership in relation to his termination of the straw business and taking the benefit for his own company unless Cam consented to his deriving the benefit of it himself, expressly or implicitly.
51. The factual position is complicated, because it is mixed up with the questions of the discussions around Cam’s proposed retirement.
52. Stuart’s 2013 and 2016 wills had not been dramatically different from each other. Stuart’s undated manuscript letter of wishes referred, however, to a ‘dramatic change’ by which Ali was to be given all the property and land that Stuart still owned, including (on condition that Ali agreed to pay Liz 60% of its value) of the farm house; and to what was evidently a new provision, giving the capital in his name in the partnership together with his share and interest in the partnership assets to Ali as well. The evidence does not include a will earlier than the 2013 will, but evidently the latest will to which this letter could have referred, and which it must have pre-dated, is the 2013 will. The letter of wishes contained Stuart’s explanation for making the dramatic change: Cam had only two daughters, neither of whom was interested in farming, and was already talking about retiring and letting his land. It follows, and I find, that Cam had been discussing retirement already by 2013.
53. A note, apparently prepared by a solicitor, of a meeting on or about 10 April 2019 between Cam, Ali, James Cater of the partnership accountants and Tim Stevenson of its solicitors, recorded that Stuart was now very infirm but it was desirable that he should remain as a supposedly active partner for tax and other purposes. It stated (correctly) that Cam had been planning to retire for a little while and some first draft documents had been prepared previously to reflect it, on the proposed basis that the partnership would carry on, with Cam

having a share to be agreed, but that the proposal had not really been developed. The plans had changed, and Cam would now like to come out of the partnership with effect from June 2020, when it was assumed that the last current crop of potatoes would be so; thereafter he would like to let to Ali his half share of the farm. As at 30 June 2020 there would have to be a valuation, and the figures as established would represent a debt owed to the current partnership by whatever vehicle Stuart and Ali carried on farming through. Ali was not quite certain on what basis he would want to carry on the farming operation: at the moment straw (that is, the straw business) was worth £1 million per annum, 50% of the income, but was extremely hard work and expensive, and he would not want to do another three-year contract regarding straw.

54. I find that this was a reference to the additional four years under the EPR Ely Ltd contract.
55. No dissent was recorded. Nothing is recorded as having been said at this meeting about Ali's taking a different contract for his own sole benefit.
56. Ali's evidence was that there had been a meeting in May 2019 at which Cam had told him that he was content for this to be the last year of the straw contract. There is a manuscript note of a meeting on 30 May 2019 apparently recording that Cam wanted to leave the partnership and rent out his half of the farm and retire, and that the contracting business was separate and could be given up, with the last year being that year. It recorded that the target date for Cam's retirement was 30 June 2020. A separate note of the same meeting, identifying those attending as Ali, Cam, and three others records that the straw contract was coming to an end that year, and that June 2020 was the end date, with decisions in Autumn 2019. Again, nothing is recorded as having been said about Ali's taking on a contract himself.
57. On 29 July 2019 Ali gave notice to prevent that contract from renewing. There is no contemporaneous evidence of any protest. On the contrary, a further manuscript attendance note of a meeting with Cam dated 30 July 2019 recorded 'not renewing bale contract (four years) for power station – Ali may take a smaller annual contract'. A separate manuscript attendance note bearing the same date, evidently of the same meeting, in different writing, records 'baling contracts 4 yrs not to be renewed. Ally [sic] might take on on [sic] an

annual basis.’ In my judgment this plainly contemplates that Ali would take any new contract for his own benefit, rather than for the partnership. There is no indication in those notes that this came as any surprise to Cam, or was regarded as wrongful or even objectionable. His case is not that he objected. If he did not expressly consent, his silence seems to me to imply consent at that stage.

58. Against this background, I am unable to accept Cam’s evidence that he had not known that the contract would be terminated, had not agreed to it, and had not known at the time that notice had been served; or his suggestion the reference to Ali’s taking a contract in the notes might be understood as a reference to his taking it on behalf of the partnership. The partnership was expected to end in June 2020; but I accept the evidence that even if the partnership had been continuing, the partners would not at that stage have wanted to continue the contract, and that this is relevant to the question of consent. Although Cam’s evidence was at times emphatic, when faced with these notes, he realised that his recollection must be inaccurate, because it was so long ago. Having heard the witnesses, I prefer Ali’s evidence that Cam consented to Ali’s giving notice to prevent the straw contract from renewing, and to his taking any new contract for his own benefit, rather than for the partnership.
59. On that basis, Ali did nothing wrong when terminating the existing contract so that it did not renew, or when signing a new contract with EPR Ely Ltd on 22 July 2020 on behalf of his own company. But that company did not become contractually bound until 1 September 2020 when EPR Ely Ltd itself entered into the new contract. The evidence of Mr Long, the straw operations manager of EPR Ely Ltd was to the contrary: he said the new contract was concluded on 22 July 2020 when A.L. Sheeting Ltd signed it, and the document was inputted to the hard drive of EPR Ely Ltd, before it was signed and dated by the latter’s CEO on 1 September 2020. I do not see how that would have made it binding. It seems to me that the new contract would not have been binding until after 1 September 2020, on the evidence before me. Until that point, either party could have walked away. Even if it had been binding, if Ali had contacted EPR Ely Ltd and asked for the contract to be put back in the name of the partnership, Mr Long accepted there would have been no problem in doing so.

60. The reason it matters is because on 13 August 2020 Cam had sent Ali an email saying that he was going to remain at the partnership after all until things were settled between them, and that until then the partnership business continued, and Ali should not do anything major in the partnership that might alter the profit which they would share equally: in particular, the bailing business needed to remain in the partnership, and he had not agreed that it should cease or be transferred out of the partnership. Ali accepted in cross-examination that he had received, read and understood it. He understood that Cam had changed his mind about the retirement plans, and he accepted in cross-examination that he knew that the retirement plans that had been discussed before were not legally binding. He resisted the suggestion that he must have known at this point that he was not able to take the straw baling business away from the partnership, on the basis that he and Mr Long made the contract when Ali signed it: he said, 'We do not go back on what we say'. He accepted he had not received the signed contract back until 10 September 2010, and that he had made no attempt to ask EPR Ely Ltd to reissue the contract in the name of the partnership. His first response to the email of 13 August 2020 was not until 9 October 2020, when he expressed his surprise and disappointment and said, among other things, that the straw contract had been moved, that he had acted in accordance with the retirement agreement which he said had been made, relying to his detriment on representations made by Cam, and seeking confirmation that Cam agreed he had retired effectively on 31 March 2020. He denied having delayed his response until he received the signed contract back.
61. Taking the evidence in the round, it seems to me that even if Ali considered himself bound in honour to the new contract once he alone had signed it (as to which I have some doubt), he did not regard himself as bound in law and, more to the point, his company was not actually bound in law until 10, or at the earliest 1, September 2020. He could have stepped away from the new contract before then, and even afterwards he could have procured if necessary that it be reissued for the benefit of the partnership. He made no attempt to do so. Although the evidence does not quite justify the conclusion that he deliberately waited until he received the signed contract back before responding to Cam's email, the fact is that he did neither of those things, and instead asserted the right to retain the benefit of the contract for his company

on the basis that Cam had retired, or was estopped from denying that he had retired, allegations which he subsequently withdrew. Accordingly, although Cam had consented, he withdrew his consent, and communicated the withdrawal of his consent to Ali, on 13 August 2020, at a time when his consent was still required.

62. Accordingly, I conclude that Ali is accountable to the partnership in relation to his termination of the straw business and taking the benefit for his own company because, at the relevant time, Cam did not consent to his deriving the benefit of it himself, expressly or implicitly.

**Dissolution: issue 5**

63. I have already found that the partnership could not be, and has not been, dissolved by notice. It remains to consider whether it ought to be dissolved by the court under its power in that behalf in Section 35 Partnership Act 1890. The court may decree a dissolution of the partnership in any of the following cases:

- “(a) [repealed]
- (b) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract:
- (c) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business:
- (d) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him:
- (e) When the business of the partnership can only be carried on at a loss:
- (f) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.”

64. The main reason for which Cam argued that an order to dissolve the partnership ought to be made was the misappropriation of the straw business, on which he relied under grounds (c) and (d) above. But his case is, also that in any event Ali’s conduct has led to a breakdown in the relationship between

the parties such that continuing as partners is no longer practicable. If made out, that would engage ground (d) and perhaps ground (f).

65. As to ground (d), I accept that what in essence is required as conduct which leads to a serious and irretrievable breakdown in the relationship between the partners. In closing, counsel for Cam rightly conceded since both use partnership money for private purposes he was not relying on that under this ground, although it is relevant on the just and equitable ground. Wrongful exclusion of a partner amounts to such conduct: *Mullins v Laughton* [2003] Ch 250.
66. I find that Ali has been guilty of such conduct as, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the partnership business. He was guilty of such conduct by taking for himself and his company the benefit of the straw business without the consent of Cam and contrary to his expressed wish, and in the knowledge of those matters. I accept that his termination of the straw bailing contract was by consent, but I do not accept that the partnership was never going to stay in the straw business, and consciously and deliberately taking such a substantial part of the partnership business for his own benefit, a part which contributed to the profitability of the partnership, is certainly conduct calculated prejudicially to affect the carrying on of the partnership business.
67. Accordingly, the court has a discretion to order a dissolution. I take into account that this is, by agreement, a partnership for joint lives, albeit one from which a partner's share of capital may be removed on notice, together with the use of any land not owned by the partnership. I take into account, too, that Ali wants to continue the partnership, not only for his own benefit but also, no doubt, for members of his family; and that he has kept on working on his own in the partnership, as well as for the benefit of his own businesses since Cam stopped in anticipation of his retirement and then in consequence of his illness. I take into account that he must appreciate that if the partnership continues, he is going to have to continue to split profits with Cam for as long as Cam lives, without Cam's contributing his labour. I bear in mind, on the other hand, that Cam is seriously unwell and wishes to put his affairs in order as far as possible before he dies, rather than leaving it to his family to deal with Ali. It is not irrelevant that when Cam wanted to retire, Ali was willing that he should do

so, albeit the terms upon which he should do so were never finally resolved; and that Ali's initial approach to the present dispute was to insist that Cam had actually retired, or was estopped from denying it. I do not accept that Cam's attempts to assert his rights as a partner pending dissolution by seeking to obtain information from Ali about the affairs of the partnership and to involve himself in the making of decisions concerning the partnership were the tactical troublemaking which Ali evidently believed they were. I regard Ali's response to them, which was at best irritable and dismissive, as understandable in the context of Cam's having changed his mind about retiring, but as inappropriate. Cam was entitled to participate in the business, and Ali was not entitled to cut him out as he did. I reject the submission that Cam engineered the dispute. On the contrary, it has been Ali whose behaviour has fostered dissension and dispute, by raising and belatedly abandoning numerous issues. In the final paragraph of his witness statement, Ali said,

“Judging by experiences to date Cam and I will not be able to work together following a dissolution to effect a satisfactory winding up which will lead to the potential of years of unnecessary further conflict whereas if and when the partnership reaches its full term at least the interests of both parties or their deceased estates will be distinct governed by either trust law or the partnership act post dissolution. Neither party will have cause to feel aggrieved by the intervention of the court in their business agreement.”

It was put to him that relations between him and his brother had got to the point where they could not even wind up the partnership affairs. Plainly that is what it meant. However, Ali attempted to deny it. It was put to him that if they could not even wind up the partnership affairs together, there was absolutely no prospect of their continuing in business together productively and cooperatively. His answer, which was that they could have a reset, and have proper negotiated terms, was unconvincing. I consider that he said so in order the better to resist an order for dissolution, and that his answer on this point did not represent his true feelings or intentions. Having heard all the evidence, and having observed both Cam and Ali closely in the witness box, it is clear to me that they will never be able to work together as partners in the partnership, and in particular that the only basis upon which Ali is prepared to continue with the partnership business is one which gives him more or less total control.



68. In March 2024 he sent Cam an email saying he wanted to withdraw all his (very substantial) undrawn profit in the partnership, amounting to over £1 million; his solicitors then responded by letter dated 14 May 2024, no doubt on his instructions, pointing to his right to withdraw capital on six months' notice. He accepted that the partnership did not have that sum in its bank account, and said it would have to come from borrowing, but accepted also that he had not asked Cam to join in borrowing to enable such a payment. He vehemently refused to accept that this was, in effect, another tactical manoeuvre designed to advance his position as against Cam, but I am satisfied that it plainly was. No other explanation was offered.
69. Taking all those matters into account, and in all the circumstances, I conclude that Ali, and not Cam, has been guilty of such conduct as, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business. I consider that an order for dissolution is appropriate. Even if, contrary to my finding, Ali had taken the straw business for his own benefit with the consent of Cam, I would have reached the same conclusion on the basis of his exclusion of Cam from his proper role in partnership affairs.
70. Further, I conclude that by taking the straw business for his own benefit without that consent, and by excluding Cam from the partnership, Ali has both wilfully and persistently committed breaches of the partnership agreement, and has conducted himself in matters relating to the partnership business in such a way that it is not reasonably practicable for Cam to carry on the business in partnership with him. Again, even if Ali had taken the straw business for his own benefit with the consent of Cam, I would have reached the same conclusion on the basis of his exclusion of Cam from his proper role in partnership affairs.
71. Taking all the evidence and argument into account, I consider that circumstances have arisen which render it just and equitable that the partnership be dissolved. I am asked to take into account, in favour of Ali's position, that Cam has an alternative remedy to a dissolution, in that he could assign his share for value to a third party and thus get his affairs into order for his family. I am not attracted by this proposition. Cam would have to find a buyer. It was not suggested that any might be found on the open market, or indeed that there was any market for such an asset outside the family. It was

asserted, without evidence, that there was a market within the family, that it was worth exploring and (accurately) that there was no evidence before the Court that it had been explored. There is no basis upon which I can conclude that anyone would be prepared to purchase a share of a supposed partnership in which Ali would be the only partner; or to go into partnership with Ali.

72. Moreover, under the terms of the Partnership Deed, Ali would have to consent. I was told, without evidence, that it is an option that Ali would be very willing to entertain. I can imagine that might be so, since it would mean that Ali could dictate the terms of any deal. It does not seem to me to give rise to a real alternative remedy at all, and certainly not one such that a dissolution ought not to be ordered.
73. That disposes of issue 5.

### **Conclusion**

74. I therefore conclude as follows.

- (1) The land at Mepal registered at HM Land Registry with title number CB352960 (line 4 in paragraph 21 of the amended particulars of claim) is beneficially owned by Cam and Ali in their own right in equal shares, and is not an asset of the partnership.
- (2) Cam and Ali are entitled to share equally in the profits of the partnership. Ali did not succeed to a continuing right to a share of the profits under Stuart's will.
- (3) Ali is liable to account to the partnership for the profits made from the straw business since it was moved to A.L. Sheeting Ltd or otherwise to compensate it for the profit it ought to have made from the same.
- (4) The partnership was not dissolved by service of the Particulars of Claim
- (5) The partnership should be dissolved by court order on the grounds that Ali has been guilty of conduct calculated to prejudicially affect the carrying on the business; Ali has wilfully and persistently breached the partnership agreement, and otherwise conducted himself in such a way that it is not reasonably practicable for Cam to carry on the business in partnership with him; and it is just and equitable in all the circumstances to dissolve the partnership.

- (6) The partnership has a tenancy, protected by the Agricultural Holdings Act 1986, of land at King's Farm comprised in a Conveyance dated 29 September 1988 and made between (1) Reed Pensions Nominees Ltd (2) Stuart and Cecily Allan and (3) Alistair and Cameron Allan as rectified by a Deed of Rectification dated 10 March 1998 and made between (1) Stuart and Cecily Allan and (2) Cameron and Alistair Allan.
- (7) I should make declarations accordingly, and order that the partnership be dissolved and wound up, and that the case be adjourned to a Master for directions as to the taking and making of further accounts and inquiries to the extent the parties are unable to reach agreement. I will deal with the question of costs at any consequential hearing which it may be necessary to hold before me.