Neutral Citation Number: [2023] EW Misc 5 (CC)

Case No: H00WF316

IN THE COUNTY COURT SITTING AT LEEDS

Date: 30 June 2023

Before :

HHJ MALEK

- -

Between :

ROSALIND HELENA VERA WILSON	**Claimant**
- and -	
(1) CURTIS CARL ANDRELL WILSON	**Defendants**
(2) TRACEY JANE WILSON	

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Mr. Geraint Wheatley (instructed by **Clarion Solicitors**) for the **Claimant**
Mr. Matthew R. Smith (instructed by **Ramsdens**) for the **Defendants**

Hearing dates: 28-30 March 2023

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APPROVED JUDGMENT

I direct that pursuant to CPR PD39A 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.

HHJ Malek :

Introduction

1. This is a sad case, involving as it does, the breakdown of close familial relationships complicated by the involvement of all three parties in the same business. When and how those relationships first began to break down is only of historic interest and not germane to my decision today. In this decision, I will, therefore, concentrate upon making findings of fact which are truly necessary for me to make in order to come to a decision.

2. The Claimant is the mother of the first Defendant. The second Defendant is the first Defendant's wife. The case concerns residential property at 32 George Lane, Notton, Wakefield ("the Property"). The Property is next-door to the Defendants' home at No.34. It was bought by the Defendants in 2008 in a derelict and uninhabitable condition. The Claimant moved into the Property in December 2009 following a promise made by the Defendants that she could occupy the Property on a rent-free basis for life. Prior to moving into the Property the Claimant, together with Eileen Marchant ("Eileen"), jointly owned and occupied 25 Far View Crescent, Huddersfield. The Claimant lived at the Property until September 2018 when she moved to 38 The Cedars, a property owned by her daughter, Tamarind Wilson-Flint ("Tamarind").

3. The basis on which it was agreed that the Claimant could move in, and the basis upon which she moved out, are in dispute and the Claimant pleads the following:

    i) A claim for statutory damages payable under section 27 of the Housing Act 1988 (the "Housing Act claim"), and

ii) A claim in proprietary estoppel.

The Housing Act claim

4. Section 27(3) of the Housing Act 1988 (the "1988 Act") provides that where section 27 applies the landlord shall be liable to pay the former residential occupier damages in respect of his loss of the right to occupy the premises in question.

5. Section 27 of the 1988 Act applies where a 'landlord' unlawfully deprives a 'residential occupier' of her occupation of premises, or where the landlord attempts to do so, or where he undertakes acts *"likely to interfere with the peace and comfort of the residential occupier"*, in circumstances where he knew or had *"reasonable cause to believe"* that doing so would either cause the occupier to give up occupation or *"refrain from exercising any right or pursuing any remedy in respect of the premises." (*See section 27 (1) and (2) of the 1988 Act).

6. There was no real argument that the Defendants were, for the purposes of the 1988 Act, landlords and that the Claimant was "*a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation*" (see section 27(9)(a) & s.1 Protection from Eviction Act 1977) and, therefore a "*residential occupier*" prior to her moving out in September 2018.

7. The real issue between the parties is whether that status changed when the Claimant moved out. On that point some assistance may be found from the decision in *Schon v London Borough of Camden (1986) 18 HLR 341* where

Glidewell LJ held that a residential occupier in this context means the same as it does under the Rent Act 1977. He went on to say:

"there is a long line of authority for the proposition that under the Rent Acts, a person may occupy premises as his residence although he is physically absent from the premises, provided that, to put it broadly, the absence is not, and is not intended to be, permanent and either his spouse or some other member of his family is physically in occupation or, at the very least, his furniture and belongings remain in the premises. Thus, to give an easy example, if a statutory tenant of the premises goes away on holiday for a month and leaves his premises empty, but with all his furniture and belongings there, he continues to be a residential occupier. He continues to occupy the premises as his residence. If he goes on a business trip for a long time, the same is true. It becomes a question of fact for the court, in the particular circumstances, as to when or what particular events constitute a cessation of occupation as a resident.

Those authorities include the well-known decisions of the Court of Appeal in Skinner v. Geary [1931] 2 K.B. 546 and the case referred to in the case stated, Brown v. Brash and Ambrose [1948] 2 K.B. 247."

8. In summary the test is whether the Claimant's absence from the Property was or became permanent as opposed to temporary. It is clear from the authorities that this is a question of fact and degree and that the Claimant must show not only an intention to return, but that this must be coupled with an outward and formal sign of her continued occupation (see *Brown v Brash and Ambrose*).

9. It was suggested by the Defendants that the criminal standard of proof applied such that I would need to be sure beyond reasonable doubt that the Defendants

had unlawfully deprived the Claimant of her occupation of the Property. I can find no support for such a proposition and it flies in the face of the general position in civil trials where proof is required on the balance of probabilities. Clear statutory language would be needed to oust the general position and no such ouster can be found in section 27 of the Housing Act 1988. The submission may have, I think, been based upon the erroneous assumption that only section 1 of the Protection from Eviction Act 1977 (rendering the offender liable to a criminal penalty) and not section 27 of the Housing Act 1988 (rendering a landlord in default liable to damages) had been pleaded in the particulars claim. As I have said that is erroneous.

10. On 10 September 2018 the Claimant packed up a significant portion of her belongings and arranged for these to be moved (using two large removal vans) to 38 The Cedars. The Claimant says that this was only a temporary move until her sciatica improved and she could move back to the Property.

11. The Defendants say that the Claimant's intention was to leave the Property permanently and live with or near Tamarind. They rely upon the following in support:

    i) The fact that the Claimant was looking for alternative accommodation in 2017.

    ii) The fact that the Claimant gifted the proceeds of sale of No.14 Cherry Tree Crescent, Walton to Tamarind in October 2017 in order to allow Tamarind to purchase the legal title to a suitable property.

    iii) The fact that Tamarind had legal title to 38 The Cedars by April 2018.

iv) The fact that on 12.04.18 the Claimant emailed her friend, Trish Odell ("Trish"), saying:

> *…Thank you for going with me to the bungalow. It was lovely to show it to someone – made me feel* we own it *at last. It will be nice, just the location that is a worry, but I should get a few good years there before lose licence.*

(i) The fact that Tony Welton (the Claimant's brother and the 1st Defendant's uncle) summarised as an objective of the meeting held with the First Defendant on around 23 May 2018, as follows:

> *…1. To Free Capital invested by Ros in the Notton House to help fund a possible move for Ros to a bungalow suitable for her future needs.*

(ii) The fact that on 9.07.18 the Claimant emailed Trish as follows:

> *…Waiting now for final removal quote (of 5). Looks like their friend Michael did do us OK at £2000 as all others so far been above….*

to which Trish responds with:

> *Re removal have you set a date? Thought you were going to sit out until Curtis comes up with some cash…*

(iii) The fact that the Claimant was involved with the plans for and the subsequent renovations and furnishing of 38 The Cedars.

12. I accept that, on the balance of probabilities, the Claimant was looking for alternative accommodation by 2017 and that she was involved in both the purchase of 38 The Cedars for Tamarind and its subsequent renovation and furnishing. However, this does not necessarily point to an intention by the Claimant to permanently move out of the Property and would also be entirely consistent with a temporary move. This is especially so when viewed in light of

the explanation given by the Claimant -namely that she had previously purchased a number of bungalows to let on the open market and found the process of purchasing, renovating and then furnishing property to be enjoyable such that she was happy to assist Tamarind in this regard in respect of 38 The Cedars.

13. Of course, the exchange of emails between Trish and the Claimant referred to above might point to a desire by the Claimant to move out permanently from the Property – but only, in my judgment, in the event that the First Defendant had paid her something to compensate her for what she perceived to be her investment into the Property. Whilst this position seems to have been viewed by the Defendants as a means of "extracting" money from them I do not see it in the same way and can find no reason to criticise the Claimant in this regard.

14. The real, and insurmountable difficulty, that the Defendants face with regards to the Claimant's intention is that she had made it clear by at least 11 October 2018, through her solicitors, that she had every intention of returning to the Property. Unless the Defendants can show that the instructions given by the Claimant to her solicitors were part of an elaborate plan to give the appearance that she had not given up permanent occupation of the Property when in actual fact she had done so (about which I say more below) then this represents compelling evidence as to the Claimant's state of mind at the relevant time.

15. I accept that a tenant (or someone in the Claimant's position) may intend to move out (or to use the more cumbersome statutory language "not be in occupation") for a temporary period of time, but in reality have moved out permanently there and then or, more likely, at a subsequent point in time. In this

regard, the Defendants submit, the Claimant's move was actually permanent by reason of, or as evidenced by, the following:

(i) The fall out with the Defendants and the similarity with the fall out with Eileen.
(ii) The Claimant had expressed a desire to live with her daughter.
(iii) The Claimant saw herself living at the 38 The Cedars for a few good years.
(iv) The hours spent packing which are commensurate with a permanent move.
(v) The fact that Claimant engaged professional removers to move a significant amount of her possessions from the Property – commensurate with a permanent move.
(vi) The fact that the Claimant had her loft and the contents of her garden shed cleared - commensurate with a permanent move.
(vii) The Claimant did not inform the Defendants of her move and would not initially state her reason (sciatica); which reason is not properly corroborated and is inconsistent in any event.
(viii) The Claimant told the Council she had moved to Leeds.
(ix) The Claimant changed the locks so the Defendants would not be able to see inside the Property.
(x) The fact that the Claimant re-directed the mail.
(xi) The fact the Property was future proofed and, if needed, a ground floor room could easily have been converted into a bathroom.
(i) The failure to clean the Property; despite protestations to the contrary.

16. Firstly, the Claimant denies that there is any similarity between the way that she fell out with Eileen and the circumstances surrounding her moving out of the Property. I tend to agree- for one the Claimant was living in a house with Eileen that they jointly owned. Secondly, and more importantly, it seems to me to be irrelevant. There is nothing in the argument that just because the Claimant fell

out with Eileen and moved out permanently she would do the same if she fell out with the Defendants.

17. Secondly, it is not clear what evidence the Defendants rely upon in support of the contention that the Claimant had expressed a desire to live with her daughter or when. The Claimant's evidence was that she wanted to live near her daughter whilst she suffered from sciatica as she was a loving and caring child who would assist her with things like the shopping. I accept that this is likely to be the case.

18. Thirdly, I accept the Claimant's explanation that when she referred to "a few good years" in her email of 12 April 2018 to her friend, Trish, she was referring to the number of years she would continue to be able to hold her driving license and, therefore, drive to and from the Cedars and not the number of years she intended to remain at the Cedars. This is clear when one reads the entirety of the email in question.

19. Fourthly, I accept that significant packing and clearing out, followed by a large number of items being removed in a large removal van from the Property might indicate a more permanent move. However, this is clearly dependent on what remains in the property. Clearly, if all (or at the very least most) of the items are removed then it is more likely that the move is permanent. In this case the Claimant left behind a significant number of her possessions and continued to pay the bills.

20. Fifthly, the Claimant explained (which explanation I accept) that she informed the relevant local authority that she had temporarily moved to 38 the Cedars, but was informed that she could only be registered for council tax at one address.

21. The remainder of the points made are weak. There is nothing to suggest that the Claimant changed her locks to prevent the Defendants from seeing inside – in fact if the Claimant was engaged in an elaborate scheme to show that she remained in occupation, as alleged, then allowing the Defendants to see that she was in occupation was imperative to the success of that scheme. Neither is there anything in the points that the Claimant failed to inform the Defendants of her movements, had forwarded her mail (which is equally consistent with a temporary move), the Property was future proofed or not cleaned. Nor do any of the points when taken together (absent a finding that the Claimant engaged in an elaborate ruse to give the perception of occupation when she was not- about which I say more below) lead to the conclusion that the Claimant's move was permanent.

22. As indicated above, during the course of these proceedings the Defendants have sought to assert that the Claimant created a charade of living in the property when she did not. Before considering this point further it might be helpful to refer to the actual test as identified at paragraph 8 above. It seems to me that what the Defendants are really arguing is that whilst the Claimant may have demonstrated the formal and outward intention of returning to the Property (by for example leaving behind furniture and communicating, via her solicitor, that she would return), she had no subjective intention of doing so. This is clearly a difficult argument to maintain in the face of the Claimant's express and unequivocal assertion (tested under robust (but fair) cross examination) that she intended to return when her health improved. The Claimant's position is further bolstered by the fact that she had communicated her intention to return to the Property at the relevant time , by email, to both her friend , Trish and her former

bank manager Mr. Michael Ward . Mr Ward, in fact gave oral evidence and under cross examination was a clear, impressive and reliable witness on this point.

23. I accept that the Claimant does not now wish to return to the Property. However, other than in the most tangential manner, this does not help us with her intentions at the relevant time. The more cogent evidence as to her intention at the time is what she did and said at the time as opposed to what her wishes now are.

24. The Defendants have also sought to argue that by changing the locks to the front door only (and offering the Claimant a key) and not changing the lock to the back door they did not deprive the Claimant of occupation. This clearly flies in the face of the contemporaneous evidence and in particular the email sent by the Defendants' solicitors to the Claimant's solicitors on 27 February 2019 wherein the Defendants confirm that they have taken steps to "regain possession" of the Property and that the Claimant was required to remove her belongings from the Property failing which they would be placed in storage (at the Claimant's expense) or disposed of.

25. The Defendants further argue that they gained access to the Property to satisfy the terms of their insurance policy such that their actions cannot be unlawful. The difficulty is that if they did gain access for this purpose (which is contrary to the purpose stated in their solicitors' email dated 27 February 2019) they did so unilaterally in circumstances where, on the evidence, the Claimant had offered, through her solicitor by letter dated 15 November 2018, general access upon the provision of reasonable notice and emergency access through a key

held locally. Accordingly, the existence of an insurance policy which might require the Defendants to obtain access to the Property from time to time does not, in the circumstances as I have found them, render their actions lawful.

26. In summary, therefore, the Claimant remained in occupation of the Property at all relevant times (only having left the Property temporarily) and the Defendants deprived her of that occupation on 8 March 2019 by taking possession of it themselves. Such deprivation was unlawful.

Statutory defences

27. Section 27(8) of the 1988 Act, of course, provides the Defendants with a defence to a claim under the 1988 Act if they can show that they (a) believed and (b) had reasonable cause to believe that the Claimant had ceased occupation.

28. The Defendants remained adamant during the course of this hearing that the Claimant had moved out permanently, and, therefore, ceased occupation of the Property on 10 September 2018. Given the Claimant's length of absence from the Property and some of the other factors (such as the presence of a large removal van) mentioned earlier it seems to me more likely than not that, by around 8 March 2019, the Defendants had convinced themselves that the Claimant had ceased occupation of the Property. No doubt this belief was influenced by a strong desire to have it so.

29. Despite the fact that this might have been (in the words of one of the Defendant – albeit said in relation to chairs rather than occupation) the Defendants' "truth", it was not, in my judgement, a belief that was reasonably held (or put in another way the Defendants did not have reasonable cause to believe). It was at odds

with the Claimant's clear assertions (through her solicitors) that she would be returning, the fact that the Claimant continued to pay the utility bills and the fact that the Claimant left significant amounts of her possessions at the Property. Accordingly, any section 27(8) defence must fail.

Quantum

30. Section 28 of the 1988 Act provides the statutory basis upon which damages under the 1988 Act are to be awarded and calculated. Damages are measured not by reference to the harm or damage suffered by the tenant, but by removing the gain that might accrue to a landlord who is able to evict (unlawfully) a tenant. To that extent the scheme appears to be punitive rather than compensatory. The measure of damages, in the context of this case, is the diminution in the value of the Property with the Claimant's right to occupy for life when compared against the value of the Property with vacant possession; assessed immediately prior to the eviction.

31. To assist the court in coming to a view the parties each instructed valuers. By their joint statement, they have agreed that the Property's value with vacant possession at the time was £360,000. They disagree on the extent to which the Claimant's interest would decrease the value of the Property.

32. The Claimant's expert, Mr Entwistle, values the Property subject to the Claimant's interest at £211,831. Thus giving an overall diminution of value figure of £148,000.

33. The Defendants' expert, Mr Abson, puts the value, subject to the Claimant's interest, at £245,142 and gives an overall diminution in value figure of £115,000.

34. The experts were, rightly, not called to give oral evidence as it would not have been proportionate for them to do so. That said, there remained a fundamental disagreement between them as regards to the methodology to be used which might have benefited from some further explanation during the course of oral evidence.

35. Doing the best that I can from the reports provided by the experts I can see that they both agreed that there was a lack of comparable properties that have sold on the open market with a sitting tenant paying no rent for the rest of his/her life. This is hardly surprising. Mr. Entwistle attempts to get around this problem by adopting a discounted cash flow method. By using this he is attempting to show how an investor might consider the investment characteristics of the Property and, therefore presumably, what that investor might pay for the Property at the relevant date subject to it being occupied by tenant for life. In essence what he does is adjust for a number of factors, most importantly, the fact that the hypothetical investor would potentially not enjoy any rent for around 11 years (the Claimant's actuarial life expectancy), but would enjoy an eventual uplift in value caused in part by natural the passage of time and in part by the fact that the Claimant might be expected to cease occupation in around 11 years.

36. Mr. Abson says he favours a "reversionary approach". Although not entirely clear, as he gives little or no explanation as to methodology, it appears that what

Mr. Abson is doing here is calculating the net present value of £360,000 based upon a term of 13 years and an interest rate of 3%. That is to say the question being asked is what is the present value of £360,000 if that sum was to be received in 13 years time based upon an interest rate of 3%. It is not at all clear to me how this is a suitable method for calculating the value of the Property at the relevant time subject to a life interest (estimated to last some 11 years).

37. Given the lack of explanation and detail provided by Mr. Abson, I would tend to favour the methodology used by Mr. Entwistle. Whilst the latter's methodology is not without its own shortcomings (in particular it occurs to me that the value of residential real property is not entirely driven by demand from investors looking at making a return, but also by individuals seeking homes to live in) it is, nonetheless, the methodology that is the more sophisticated and nuanced of the two. What is more it is the methodology that is better explained and reasoned.

38. I, therefore, find that the diminution in value, and therefore, the damages payable by the Defendants to the Claimant is £148,000.

39. For the sake of completeness I should also deal with ss.27(7) and 29(7) of the 1988 Act. By s. 27(7)(b) it is provided that the Court may reduce the damages payable if, prior to the eviction, *"the conduct of the former residential occupier ... was such that it is reasonable to mitigate the damages for which the landlord in default would otherwise be liable".* The Defendants' defence does not point to any conduct prior to the eviction, but rather relies upon the 'conduct' of moving to, what I have held to be, the Claimant's temporary accommodation. I agree with the Claimant's submission that it cannot be right to look at conduct

post the eviction – even if it could somehow be argued that such conduct was such that it is reasonable to mitigate the damages awarded.

40. Section 29(7)(b) allows the Court to reduce the damages if the occupier has unreasonably refused an offer of reinstatement. On the facts I can find no offer of reinstatement ever having been made. Clearly, the offer of keys being made available identified in the correspondence was superseded when the Defendants, through their solicitors, informed the Claimants that they had "regained possession" and required the removal of the Claimants' belongings, denying her right to occupy.

Double recovery

41. Finally, the Defendants rely upon section 27(5) of the 1988 Act to argue that the Claimant cannot or ought not to be compensated twice for the same loss. That is to say that it would be double recovery to make an award under proprietary estoppel and s.27 of the 1988 Act.

42. S.27(4) makes clear that the cause of action in tort created under s.27(1) is in addition to any liability arising apart from s.27, but damages are not to be awarded both in respect of a liability for loss of a right to occupy premises as a residence and in respect of a liability arising under s 27 (s 27(5)). It has, therefore, been held, for example, that a court was entitled to award common-law damages for breach of a covenant for quiet enjoyment and statutory damages under ss 27 and 28 of the 1988 Act in addition because the damages at common law had not been awarded for any loss of right to occupy (see *Daljit Kaur v Gurmail Singh Gill (1995) Times 15 June CA*). So, in order for ss27(4)

and (5) to bite what must be shown is that (a) the secondary award consists of damages and (b) that those damages are awarded for a loss of right to occupy.

43. A claim for relief based on proprietary estoppel is not, in my judgment, a claim for damages. It is not compensatory in nature, even if the award is or becomes financial. As I set out in more detail later in this judgment, the aim of remedy in proprietary estoppel cases is the prevention of detriment. That is very different in nature to a claim for damages. It follows, therefore, that if relief in proprietary estoppel is not in the nature of a damages claim then no "damages" are awarded in respect of that claim and, accordingly, ss 27(4) and (5) do not apply.

Proprietary estoppel

44. It is well established that where: (a) owners of property agree with, or represent to a third party that the third party has, or shall have an interest in / over the property, and (b) the third party relies on that agreement or representation to his/her detriment, then (c) an equity arises in favour of the third party, where it would be unconscionable for the owners subsequently to deny them that interest.

45. In the present case it is common ground that the Defendants agreed that the Claimant could live at the Property rent-free for the rest of her life. The parties differ as to the terms of the agreement. The Claimant says that she was promised rent-free occupation for the rest of her life on the basis that she would pay for the renovation of the Property. On the Defendants' case there was no agreement

for the Claimant to pay for the renovations in return for the promise of rent-free occupation for life. The Defendants say that the promise of rent-free occupation came without any strings attached and that the Claimant voluntarily paid for renovations to suit her own taste and preferences.

46. The parties reached agreement in around 2008 and, as one might expect, given the nature of the agreement and the relationships between the parties to that agreement, nothing was reduced into writing. The parties, accordingly, had to do their best in trying to recollect what was said and/or agreed some 15 years ago. Whilst all the parties did their best, on balance, I preferred the Claimant's evidence on this issue. This is, largely, because her account was supported by Mr. Ward who recalled being aware of discussions in circa 2008 taking place between the Claimant and the Defendants whereby the Claimant could live in the Property subject to the Claimant paying for its renovation.

47. Given that it is conceded by the Defendants that the Claimant spent approximately £65,000 on renovating the Property (in circumstances where I have found that the Claimant was to pay for the renovations in return for her rent free occupation) there can be no argument that she has not suffered detriment following her reliance upon the agreement / promise made by the Defendants.

48. It must, of course, be right that a party who makes a promise (such that a promisee acts to his detriment by reason of his reliance upon it) and then seeks to renege on that promise acts, prime facie, unconscionably. The Defendants, in my judgment, did so. For the avoidance of doubt this position is not changed by the fact that the Claimant lived at the Property rent free for almost ten years (this

was the actual agreement) or that there was no expectation or discussion that the Claimant would receive equity in the Property.

Remedy

49. After reviewing the authorities in *Guest v Guest* Legatt JSC concluded at [261] that in cases such as those that he had identified:

" *The court has a flexible discretion to fashion a remedy which does justice in the circumstances of the particular case. But, in exercising this discretion, the aim is to award a remedy which does all that is necessary, but no more than is necessary, to prevent B from suffering detriment as a result of having relied on a promise...*"

50. In more detail he said:

"*255. In such cases the core principle underpinning the grant of relief is that equity will not allow A to go back on the promise made without ensuring that B does not suffer detriment as a result of B's reliance on it. The aim of the remedy is thus to prevent detriment to B in the circumstances which have arisen.*

256. In principle, there are two methods of achieving this aim. One is to compel A to perform the promise (or to award a sum of money calculated to put B into as good a position, as best money can do it, as if A's promise had been performed). The other is to award a sum of money calculated to put B into as good a position, as best money can do it, as if B had not relied on A's promise: in other words, to compensate B's reliance loss. Since both methods will in principle achieve the aim of preventing detriment to B, if on the facts both are

practicable the court should adopt whichever method results in the minimum award necessary to achieve that aim."

51. Holding the Defendants to their promise, by recognising the Claimant's right to occupy the Property and for the court to give effect to the promise of permitted occupation by the Claimant of the Property for the rest of her life, is clearly the most appropriate remedy. It gives the Claimant exactly what she was promised (and no more) and obliges the Defendants to give up no more than they had promised and, indeed, receive the benefit (in due course) of the added works completed by the Claimant to the Property in return for her occupation.

52. However, the Claimant does not seek such a remedy. She says that I should, in effect, make an order which provides for a "clean break" by making an award of money in her favour based upon how much she has put into the property. This is because there has been a "breakdown" in the parties' relationship. In my judgement this is not a case where I should depart from, what I have described as, the most appropriate remedy. This is because such an approach is sub-optimal and, on my reading of the authorities, ought to be used only where it would involve putting the parties in an impossible or very difficult position (by for example forcing them to continue to live the in same house or continue in business together). That is not the case here. The parties are neighbours and do not live in the same house. Further, on the evidence, the relationship between the Claimant and Defendants had already broken down for some time before she took the decision to move out from her home. Whilst this might not suit any of the parties there is no real reason why the Claimant could not resume her former occupation of the Property.

53. Notwithstanding my view, I would not wish to impose a remedy that is, in effect, abandoned by the Claimant and not welcome by the Defendants. I, therefore, turn next to considering whether and in what sum the Claimant ought to be awarded a monetary sum to prevent detriment to her in the circumstances that have arisen.

54. I turn first to the detriment that the Claimant has suffered. There is, first, the obvious point that homes, especially when one is settled, are unique and some ways irreplaceable. Whilst, obviously, difficult to quantify it seems to me that for this Claimant this does not represent a major consideration as she does not now wish to return to the Property.

55. Secondly, it was said on the Claimant's behalf that she lost the security of mortgage-free home at 25 Far View Crescent. However, the facts do not support such a contention. On the evidence before me it was clear that the Claimant was going to leave and sell 25 Far View Crescent because she had fallen out with her co-owner, Eileen.

56. Thirdly, it was argued that the Claimant paid the bills at the Property during the period of her occupation. For my part, I cannot see how this would represent a detriment to her. She would have had to pay the bills (subject to her consumption) no matter where she resided.

57. It is clear that the core detriment that the Claimant suffered is the loss of exclusive use, for the rest of her natural life, of the Property (a property that she has spent considerable sums on). Absent being able to put the Claimant in the position that she would have been had the promise been performed we are left with an award of money calculated to put the Claimant into as good a position,

as best as money can do it, as if she had not relied on the Defendants' promise. In other words, the Claimant ought to be awarded the sums that she had put into the Property, as she would not, on the facts as I have already found them, put her money into the Property had she not been promised occupation for life at no rent. This is, essentially, the remedy advocated for by the Claimant.

58. The Claimant says that she made the following payments:

i) £73,000 by way of a series of small cheques payable to the Defendants between May and November 2009,

ii) £70,000 in February 2010,

iii) £50,000 and £20,000 in or around June 2010 to the First Defendant when he became aware that the Claimant had received £70,000 more from the proceeds of sale of her previous property, and

iv) £70,000 direct to contractors in cash.

59. The Claimant has offered no evidence (other than by way of bald assertion) that she made any payments to contractors in cash. Whilst I accept the difficulties in evidencing cash payments, particularly given the passage of time, the Claimant would need to do more than she has done if she is to show, on the balance of probabilities, that she made these payments.

60. In relation to the February and June 2010 payments I accept that these payments were made as gifts by the Claimant to the First Defendant to equalise the inheritance that the First Defendant and his sister, Tamarind, were to receive from the Claimant. Some support for this can be found in the documents (DB89

and 91), but more importantly these payments are all significantly larger than those made between May – Nov 2009. It seems to me that the sums paid in February and June 2010 were outright gifts and not made by the Claimant in reliance upon the Defendant's promise.

61. Conversely the payments made between May – Nov 2009 are small and fairly regular payments that one might expect to see paid to a small contractor during the course of a job. Besides the Defendants admit £65,000 of this sum. It is, accordingly, more likely than not these are payments made by the Claimant to enable works to be carried out at the Property and that such payments were made by the Claimant in reliance upon the Defendants' promise. These payments total, as I have said above, £73,000.

62. Whilst the Defendants have intimated that the Claimant does not come with "clean hands" and has delayed bringing these claims I can deal with these matters in short order. Nothing the Defendants have said (or more importantly been able to show) vis-à-vis a failure to answer questions, inadequate disclosure and inconsistent evidence take this case out of the ordinary and into the realms of "unclean hands". Nor is the delay of some 2 ½ years in bringing this claim inordinate given the complexity, familial sensitivity and, in particular, lack of identified prejudice caused to the Defendants by the passage of time.

Conclusion

63. For the reasons that I have given I find that the Claimant has been able to show, on the balance of probabilities, that:

i) The Defendants have unlawfully deprived her of the occupation of the Property such that she is entitled to damages under the 1988 Act and I have assessed those damages in the sum of £148,000,

ii) Relying upon a promise made by the Defendants that she could live at the Property rent free for the rest of her life she spent some £73,000 renovating and decorating the Property in circumstances where an equity arose in her favour such that the Defendants are required to pay the sum of £73,000 to her to compensate for her loss flowing from reliance upon the promise.

64. There should, accordingly, be judgment for the Claimant in the sum of £221,000.

65. The parties are invited to agree any consequential orders and present a draft to me in advance of this judgment being handed down. In the event that agreement is not possible I shall hear submissions following the handing down of judgment.