Neutral Citation Number: [2015] EWHC 015 (Ch)

Case No: 2HV00182

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
CARDIFF DISTRICT REGISTRY

Cardiff Civil Justice Centre
2 Park Street Cardiff CF10 1ET

Date: 11/02/2015

Before :

HIS HONOUR JUDGE MILWYN JARMAN QC

- -

Between :

EVAN JOHN TEGWYN DAVIES **MARY EILEEN DAVIES**	**Claimants**
- and -	
ELIZABETH EIRIAN DAVIES	**Defendant**

- -
- -

Mr Jonathan Gaunt QC and Miss Elizabeth Fitzgerald (instructed by **Michelmores LLP**) for the **claimants**
Mr Leslie Blohm QC (instructed by **Hugh James**) for the **defendant**

Hearing dates: 5-8 January 2015

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Approved Judgment

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

HH Judge Jarman QC :

1. In a judgment handed down on 30 August 2013 I determined a number of preliminary issues in this litigation. I concluded that it would be unconscionable under the doctrine of propriety estoppel for Tegwyn and Mary Davies the claimants to deny their daughter Eirian the defendant some interest in Henllan Farm, Whitland, Dyfed and the farming business, because of her detrimental reliance upon representations made by one or both of them as to such interest. The preliminary issues directed to be tried did not include the proportionality of the remedy or the remedy itself which remained to be determined between the parties by agreement or further determination of the court. I ended the judgment by encouraging the parties to strive to find a solution themselves, despite the bitterness which by then existed between them.

2. The parents appealed that judgment and the Court of Appeal in a judgment handed down on 7 May 2014, after making by consent an amendment to the court order (the draft of which was agreed between the parties) following the earlier judgment, upheld the finding of an equity over the farm and/or the farming business. Floyd LJ, with whom the other members of the court agreed, also ended his judgment by expressing the hope that the parties might be able to resolve such remaining difficulties as they have in relation to such entitlement without recourse to further costly and divisive litigation.

3. The parties however have not been able to do so and there was a further hearing before me over four days as to the extent of that entitlement. If anything the relationship has worsened to the extent that it is now agreed by their respective counsel that there is no real prospect of the success of any outcome which would depend upon co-operation between the parties. The parties remain far apart.

4. Eirian says that nothing less than a transfer to her of the farm and the farming business, the net worth of which is now just under £4.4 million, will satisfy her equity. A sale of over 20% of the land would attract Capital Gains Tax at 28% and the value after such tax is taken into account is £3.15 million. Her parents maintain that an appropriate remedy is to quantify her interest in monetary terms having regard to unpaid hours and a fair share of the profits, which they round to £350,000. Each of these proposals would give ownership of the farm and business to the party making it, and one fact which is not in dispute is that the success of the farm and business is due to the hard work and passion of each of the three parties. That passion remained evident throughout both hearings before me, particularly that of father and daughter, and in my judgment is likely to be the dominant motivation behind this litigation rather than monetary reward. Without co-operation however both sides cannot secure the farm and business. One possible option would be a grant of a reversionary interest in the farm and business to Eirian. That has not been advanced as a realistic option because of the poor relationship between her and her parents. Consequently there was little said on behalf of either side in the course of the most recent hearing as to alternatives to their respective proposals.

5. As foreshadowed by an observation of Floyd LJ, the split trial procedure has not proved to be ideally suited to this sort of claim. The parties filed further written evidence for the most recent hearing and each gave further oral evidence. On behalf of Eirian, her partner Mark Lewis was again called to give oral evidence. On behalf

of her parents, her sisters Enfys and Eleri were again called to give evidence and a farm worker Kamil Kicior was also called.

6. Each of the parties in his or her most recent witness statements and oral evidence included factual matters in respect of which findings of fact have been made in the earlier hearing. Mr Blohm QC who appeared for Eirian, as he did in the two previous hearings, and Mr Gaunt QC appearing for the first time for her parents, each made plain that he did not seek on behalf of his client or clients to go behind or reopen those findings of fact.

7. Having said that, each proceeded on the basis that further detailed evidence as to the detriment suffered by Eirian in reliance upon the representations of her parents was needed for a proper determination of remedy and I agree with that approach.

8. I do not set out here again in detail the findings which have been already made, as they can be found in the previous judgment as commented upon by the Court of Appeal, the neutral citation numbers of which are [2013] EWHC 263 (Ch) and [2014] EWCA Civ 568 respectively.

9. For present purposes the findings as to representations of the parents, and their daughter's reliance upon them, may be summarised as follows:

   i) In about 1985 when she was 17, her parents told her that the farming business would be hers one day. She relied on this by working on the farm.

   ii) In March 1998, her parents told her that she would have a long term future at the farm. When she moved into the farmhouse in December 1998 she thought she was a partner in the farming business. She relied on this by working on the farm and then moving into live at the farmhouse.

   iii) When she discovered she was not a partner she again left farm in 2001. In late 2007, her father told her that the farmhouse would be her rent free home for life after which she moved back into the farmhouse.

   iv) In July 2008, her parents agreed that she would be a shareholder in the company Henllan Farms Limited (the company) which by then they had formed to own the farming business, and she continued to work on the farm

   v) In 2009, her parents told her that the farm would be left to her. At the opening of a new milking parlour and on another occasion her mother told guests at the farm that to the effect that this was for Eirian's future and that she hoped her daughter would be as happy on the farm and she and her husband had been for 50 years. She continued to work on the farm until another row in August 2012 since when she has remained in the farmhouse but has not worked on the farm.

10. In broad terms the detriment which was found was the working for long hours on the farm for a total period of 20.5 years from 1984 to 2012 without full payment. 11 of those years were full time and the remainder part time. The work consisted primarily of milking of what was to become the renowned and award winning herd known as the Caeremlyn herd, but she also did veterinary work, foot trimming, insemination work and general farming work. The detriment was not purely financial. Had she not

worked on the farm, she would have been able to work shorter hours in a working environment of her choosing and she would have been free of the difficult working relationship she had with her parents.

11. There remains a dispute about just how much work apart from milking she did. The milking herd steadily grew during the time she worked there from under 200 to over 400 in 2009 when a new parlour was built, after which the herd increased in size to about 800 milking cows, as well as bulls heifers calves and a few beef cattle. After a row with her parents in 1989 she stopped living with them, she says for matter of weeks, but maintains that she did not stop working on the farm then. Up until 2001 she says she was working from about 7 am until 8-9 pm each day and being paid for only 3 hours milking. She accepts she did no work on the farm from 2001 to 2006 after another row, apart from attending a few times to a sick cow at her father's request. In 2007 and 2008 she worked for the provider of livestock reproduction services called Genus, but maintains she would supervise the start of the milking in the mornings and then work on the farm in the afternoons and on her days off, attending to calving, insemination and veterinary work. When her parents in 2008 agreed that she should become a shareholder in the company which by then owned the farming business, she gave her notice in at Genus and with the increased herd says she was working 100 hours every week, although by then she was being paid £1500 per month.

12. Her parents say that she is prone to exaggeration and that she was in reality nothing more than a herdswoman. In her most recent oral evidence Mary Davies appeared to accept that the first time her daughter left the farm after a row she was away for a matter of months, from 1989 till later that year or early in 1990 when she married and there was reconciliation. She accepted that her daughter was quite good at veterinary work and insemination work but maintained that it was her husband who did foot trimming and that until 2001 although she was responsible for the herd this was with 4 or 5 other workers. In 2006 she did some milking and some insemination on the farm. Her parents say that this was to give financial support during her divorce as she was then working hard with other jobs. Her mother maintained that she did not go to work on the farm in the afternoons while working for Genus, saying that even if she did go up to the farm there was not much to do. When she was pressed to say whether her daughter did go to the farm during this time she said she did not know. When her mother was cross examined upon a reference in her witness statement to Eirian's return to Henllan in 2007 being to their advantage, she maintained that she was referring to the fact that this would mean that she thereafter spent less time looking after Eirian's children. Her husband, however in cross examination accepted that his daughter's return was an advantage to the business. Mary Davies did accept that her daughter had a genuine love of cows, but added that what she needed was half a dozen cows "to coddle." Tegwyn Davies appeared at other times when giving evidence to be dismissive of his daughters work, saying at one stage that she might have artificially inseminated "the odd cow."

13. Ironically and sadly this appears to be something of a reversal of the impression given in 1997 when Mary Davies accepts that she put her daughter forward for The Western Mail Young Farmer of the Year award and filled in the application form herself, her husband having previously won the Farmer of the Year award. Local press reports of

her wining the award were put to Mary Davies in cross examination, including this passage:

> "Eirian modestly describes herself as a stock person rather than a farmer. In fact she manages a herd of 250 milk cows on her own. She will help with the 250 sheep and the 3,000 quality award winning turkeys the family also rear on their 600 acres and three farmsteads at Henllan Amgoed Whitland. But her real love is the award winning Caer Emlyn herd of Holstein Friesians."

14. When asked whether the reports contained any inaccuracies Mary Davies replied that her daughter did not help with the turkeys, but accepted that she was proud of her for winning the award. It was at this point that she added: "I've always said that with us at her side she can move mountains but without us she is nothing." In my judgment that is a rather telling phrase, which shows some recognition of her daughters considerable qualities and abilities with the herd but which is then qualified in dismissive terms.

15. I have already found that in 2009 Eirian was shown drafts of her parents wills which left the farm to her and a share in the company, and that upon the opening of the new parlour and on an open day at the farm her mother announced to the guests that Eirian would take over the business in due course. When it was put to Mary Davies in cross examination that the draft will had been drawn up on the basis of what her parents then considered to be fair, she said it was only a thought and that the will was never executed. She also said that she and her husband always strove to treat each of their three daughters equally. When she was pressed to say whether she and her husband had the thought of leaving the farm to Eirian because it was fair, she was reluctant to answer but then said that she did not have a good memory and could not remember what "blackmail" her daughter was doing. This part of her evidence was particularly unimpressive in my judgment.

16. Mary Davies was also disparaging about her daughter's care of the herd in the months leading up to the final falling out in August 2012, saying that some cows were not in calf and putting on weight, the parlour was dirty, some cows were infected with mastitis and milk had to be thrown away. She said that everything that could go wrong went wrong. She appeared to accept that scans and cell counts show that high standards were maintained in the parlour and in the herd until after that date, but said that did not account for the milk down the drain. Some support for this was given by her husband, who produced a calving index from Genus which appeared to show that some cows were inseminated again only a few days after calving instead of the usual 42 days intervening. This he put down to cows running with the bull instead of being kept for artificial insemination. He accepted that after his daughter left they employed a farm manager for some two months who in his words "did not understand cows." He accepted also that records showed a high standard of cleanliness in the parlour and in the herd until after August 2012 but did not accept that was due to his daughter maintaining the standards because the figures were averages.

17. Eirian Davies accepted that the farm business made a loss in 2013 and 2014 but denied this is because she left the farm in a mess. She accepted that the Genus calving index showed a problem but maintained that she did not allow any cow to be

inseminated under 40 days after calving, and that these figures were manually transferred by a Genus worker from a different computer system then used in the farm business and that mistakes must have been made. There was some support from her partner Mark Lewis who said that what Eirian did remained the same day to day and no concern was expressed about the calving index.

18. A number of witness statements were obtained on behalf of her parents from workers suggesting that the work which she did was not as much, or as good, as she claimed. One of these was from the manager who succeeded her whom her father described as lacking an understanding of cows. Some of these statements were put to her in cross-examination. She answered these in detail and said that two of statement makers had told her that her mother had written the statement and another had told her that he had not said half of the things in the statement. None was called to give evidence.

19. In my judgment the evidence from Eirian Davies as to what she did on the farm was given in a clear detailed straightforward and fluent way. In giving it, her passion for the herd shone through as it did on the last occasion. In contrast when her parents gave her evidence as to what she did, whilst their passion for the herd was also apparent, so too was the bitterness which so sadly they now feel towards their daughter. In my judgment it is likely that because of those feelings they are now reluctant or perhaps cannot bring themselves to acknowledge in full the contribution that she has made to the herd in particular. The few small concessions which were made were not made readily, and some of those were then qualified. As late as 2009 they were thinking, and announcing to guests, that their daughter would take over the business. That does not sit easily with their case now as to what little or poor contribution she made.

20. I prefer the evidence of Eirian and her partner as to the quantity and quality of the work which she did on the farm. In my judgment it is likely that she maintained her passion for the herd, and her high standards of care until she left in August 2012. Any difficulties with the herd in that year are likely to arise from the period after she left when a manager who did not understand cows took over.

21. Having made those further findings as to detriment I now turn to the principles which I must apply in determining the appropriate remedy. There was no substantial dispute before me as to those principles, but there was one difference of approach. Mr Blohm on behalf of Eirian submits that the representations and detrimental reliance in this case gives rise to a relationship of a contractual nature and the approach should be to award what was promised unless that is out of proportion to the detriment suffered. Mr Gaunt on behalf of her parents, whilst accepting that what was promised must be a factor to be taken into account, submits that the overarching approach is to seek to do justice between the parties and that the remedy should be proportionate.

22. Each referred me to passages in the judgment of the Court of Appeal in *Jennings v Rice* [2002] EWCA 159; [2003] 1 P&CR 8, which concerned the appropriate relief for a claimant who had looked after a widow for many years as a result of her assurances that her home would be his upon her death. The award was put on the basis of the estimated costs of full time nursing care, rather than the value of the house and furniture, which the judge held would have been excessive. The Court of Appeal rejected the claimant's appeal which was put on the basis that the basic rule was that the established equity should be satisfied by making good the expectation, and in

doing so cited a number of authorities starting with *Crabb v Arun District Council* [1976] Ch.179.

23. As a result of that review Aldous LJ at paragraph 36 said:

> "There is a clear line of authority from at least *Crabb* to the present day which establishes that once the elements of proprietary estoppel are established an equity arises. The value of that equity will depend upon all the circumstances including the expectation and the detriment. The task of the court is to do justice. The most essential requirement is that there must be proportionality between the expectation and the detriment."

24. The other members of the court, Mantell LJ and Walker LJ as he then was, also agreed that the appeal should be dismissed "for the reasons given by Aldous LJ." Walker LJ added some observations of his own because of the general interest in the case and Mantell LJ also included those in his reasons for dismissing the appeal.

25. Walker LJ at paragraph 45 referred to cases of a consensual character where expectations and the element of detriment will have been defined with reasonable clarity and gave the example of a carer who has the expectation of coming into the benefactor's house either outright or for life. He said:

> "In a case like that the consensual element of what has happened suggests that the claimant and the benefactor probably regarded the expected benefit and the accepted detriment as being (in a general, imprecise way) equivalent, or at any rate not obviously disproportionate."

26. At paragraph 48 he cited the well known reference by Scarman LJ in *Crabb* to "the minimum to do justice to the plaintiff" and then observed that that does not require the court to be constitutionally parsimonious, but it does implicitly recognise that the court must also do justice to the defendant.

27. At paragraphs 50 to 52 he said:

> "To recapitulate: there is a category of case in which the benefactor and the claimant have reached a mutual understanding which is in reasonably clear terms but does not amount to a contract. I have already referred to the typical case of a carer who has the expectation of coming into the benefactor's house, either outright or for life. In such a case the court's natural response is to fulfil the claimant's expectations. But if the claimant's expectations are uncertain, or extravagant, or out of all proportion to the detriment which the claimant has suffered the court can and should recognise that the claimant's equity should be satisfied in another (and generally more limited) way.
>
> But that does not mean that the court should in such a case abandon expectations completely, and look at the detriment

> suffered by the claimant as defining the relief. Indeed in many cases the detriment may be even more difficult to quantify, in financial terms, than the claimant's expectations. Detriment can be quantified with reasonable precision if it consists solely of expenditure on improvements to another person's house, and in some cases of that sort an equitable charge for the expenditure may be sufficient to satisfy the equity… But the detriment of an ever increasing burden of care for an elderly person, and of having to be subservient to his or her moods and wishes, is very difficult to quantify in money terms. Moreover the claimant may not be motivated solely by reliance on the benefactor's assurances, and may receive some countervailing benefits (such as free bed and board). In such circumstances the court has to exercise a wide judgmental discretion.
>
> It would be unwise to attempt any comprehensive enumeration of the factors relevant to the exercise of the court's discretion, or to suggest any hierarchy of factors."

28. He went on to express the view that those factors include, but are not limited to, misconduct, that the court cannot compel people who have fallen out to live peaceably with one another, alterations in the benefactor's assets and circumstances, the likely effect of taxation, and to a limited degree the other claims (legal or moral) on the benefactor. Towards the end of his judgment at paragraph 56 he agreed with the observation of Hobhouse LJ in *Sledmore v Dalby* (1996) 72 P&CR 196 that to recognise the need for proportionality

> ".. is to say little more than that the end result must be a just one having regard to the assumption made by the party asserting the estoppel and the detriment which he has experienced."

29. Reference was made to *Jennings* amongst other authorities, and in particular to paragraphs 50 and 51 set out above, by Sir Jonathan Parker delivering the judgment of the Board in *Henry v Henry* [2010] UKPC 3; [2010] 1 All ER 988. At paragraph 59, the Board concluded that the existence and extent of any equity arising under the doctrine of proprietary estoppel is dependent upon all the circumstances of the particular case, including the nature and quality of any detriment suffered by the claimant in reliance on the defendant's assurances, and at paragraph 65 said:

> "Proportionality lies at the heart of the doctrine of proprietary estoppel and permeates its every application."

30. Mr Blohm relied in particular upon the more recent Court of Appeal authority *Suggitt v Suggitt* [2012] EWCA Civ 1140. In that case a father had assured his youngest child and only son that he would inherit farm land worth about £2.5 million as well as somewhere to live, in reliance upon which he had out carried some works of restoration, fencing, maintenance, and developed livery and poultry activities, but had also benefitted from free board and lodge and some of the profits. His Honour Judge Kaye QC held that the son had "positioned his whole life on the basis of the assurances…" and that his father did not want to see his son homeless. The judge

awarded the son the farmland and a house worth some £760,000. There were other substantial monies in the father's estate.

31. A number of points were taken on behalf of the estate on appeal, including that the relief was disproportionate, in particular by the award of the house as well as the farmland. Arden LJ, giving the lead judgment dismissing the appeal, also cited paragraph 50 of the judgment of Walker LJ in *Jennings*, and then said this at paragraph 44:

> "In my judgment, this principle does not mean that there has to be a relationship of proportionality between the level of detriment and the relief awarded. What Walker LJ holds in this paragraph is that if the expectations are extravagant or "out of all proportion to the detriment which the claimant has suffered" the court can and should recognise that the claimant's equity should be satisfied in another and generally more limited way. So the question is: was the relief that the judge granted "out of all proportion to the detriment" suffered?"

32. In concluding that it was not, Arden LJ referred to the finding that the father did not want his son to be homeless, and expressly took into account the value of the farmland and the house before concluding at paragraph 50:

> "However, the fact is that, on the judge's findings, the assurances were made and the values only reflect the assurances."

33. In my judgement the facts of the present case do not fit easily into the sort of situation envisaged by Walker LJ in *Jennings* where "the consensual element of what has happened suggests that the claimant and the benefactor probably regarded the expected benefit and the expected detriment" as being generally equivalent or not disproportionate, for three main reasons. First, a number of different representations were made over the years. Second, in 2001 when Eirian left the farm after a row she had to an extent as she readily accepted in cross examination "given up on Henllan." She then owned her home at Ludchurch, which she retains although it is at present let out, and worked hard in a number of jobs before commencing a career at Genus. She accepted that she is capable of earning a living elsewhere, as she has been doing again since 2012. Third, as she also readily accepted, her expectation of the farm and the business was dependent upon her continuing to work in the business. That did not happen. Mr Blohm submits that that did not happen because her parents after the row in August 2012 served notice to quit the farmhouse. That is a submission which I shall have to deal with in more detail, but in my judgment that should be undertaken as part of an examination of all the circumstances of the case in order to do justice between the parties. I set out those circumstances below.

34. Those factors in my judgment distinguish the facts of the present case from those in *Suggitt*, where the assurances were consistent and continuing until the father's death, as was the reliance. That case fits more easily into the situation envisaged by Walker LJ. Unlike the *Suggitt* case it cannot be said here, notwithstanding my findings as to detriment, that Eirian positioned her whole life on the basis of her parents' assurances.

As recently as 8 or so years ago she was living and working independently of them with no intention then of returning.

35. That leads to an appropriate starting point for a consideration of all the circumstances, namely expectation. Mr Blohm submits that there is a loss of expectation in succeeding to the business and that Eirian was brought up to believe that she would so succeed. In my judgment that is a fair summary of my findings until 2001. However, as Mr Gaunt submits, it is of significance that after she left in 2001 she then had no expectations regarding the farm. As already indicated for the next 5 years or so she lived and worked independently of them. Moreover in 2007 she returned to live in the farmhouse as a result of her father's assurance that she had a home there for life rather than any further assurances regarding the farm or the business.

36. However by the July 2008 meeting she was offered a share in the company which owned the herd and dead stock, but not the land other than 76 acres at Llanlliwe, which now has solar panels upon it. It was made clear on her behalf that in seeking an award of the farm and business, this land is not included. In cross examination she accepted that in 2008 she understood that the share she was being offered was a share in the company. I have already found that the parties thereafter proceeded on the basis that an agreement to that affect had been finalised. Eirian said in evidence that she thought the share she would receive would after incremental increases amount to 49% and there is reference in that figure in the contemporaneous documentation, and I accept that initially she did.

37. Over the next 2 years or so different proposals were thought about and to some extent discussed between the parties as set out in my previous judgment including draft wills of her parents shown to her in 2009 by which the farm was to be left to her. As indicated above in that year her mother announced to guests at the farm that Eirian would be taking over the business. However, wills were not executed until later in 2010, under which Eirian was to receive a part of father's share in the company amounting to some 20%.

38. Accordingly from 2007 until 2012 the position with regard to expectation was changing and somewhat uncertain. Much of this uncertainty related however to her parents' proposals as to how to formalise Eirian's position in documentation at particular times. The essence of the expectation was that in reality Eirian was the only person who could fulfil her parents' wishes of keeping the business in the family after their days. Whilst the expectation was focused on the herd, there was no suggestion of the business being carried on from land other than the farm.

39. I accept that in terms of expectation, what was important to Eirian in particular was working with the Caeremlyn herd rather than any herd. She accepted in cross examination that she is able to earn a living away from the farm, but she said "that is my passion", adding that although she cried when she left in 2001 she was prepared to give it up then because she was pregnant and had had enough. She was offered a position of farm manager on another farm during her 2001-5 absence but turned it down because she said she had a small child and didn't want to be running someone else's farm. That evidence rang true and I accept it.

40. That passion is also relevant to detriment, because the work which I have found Eirian carried out on the farm was work which she loved doing. However, it was carried out

over long and unsocial hours within a difficult relationship with her parents. New evidence presented to the Court of Appeal shows that she was earning £75 per day at Genus rather than £100 as previously found, but she says she also had provided a mobile phone petrol and lunch. It remains a good indication of the sort of career she could have had with shorter hours and a better working environment. In my judgment having regard to her considerable skills with the milking herd and her capacity for hard work it is likely that she would have done very well in such a career.

41. I have found that she gave her notice in to Genus because of the promises made in the July 2008 meeting as to a share in the company. That led to a period of some 4 years when Eirian worked long hours for £1500 per month, which came to an end in August 2012. As I have found, at the end of that month her father assaulted her and she assaulted him, and that this is likely to have been the culmination of frustration on the part of Eirian arising from the failure of her parents to formalise her role in the business despite indications that this would be done, frustration on the part of her parents that her relationship with men who had children and how that may impact upon their desire to keep the business in the family, and frustration on both sides arising from the difficult relationship over the years.

42. In her most recent oral evidence Mary Davies said that after that incident she phoned a good friend to say that it had "all come to an end" and asked him to tell Eirian that if she would leave the farm and the farmhouse then she would be looked after but she "was not having it." It was then that the notices to quit were served. There had been rows before, and reconciliations before. This occasion however involved assault by both sides causing physical injury and it was her parents who decided that it had all come to an end. It seems unlikely that even then there was great scope for reconciliation. In my judgment probably the major factor in the frustrations referred to above was that Eirian who was by then in her mid forties still had nothing in writing to confirm her position, apart from her father's will which he could change, as he had done previously.

43. She did not want to go back to work for Genus in light of witness statements which former colleagues had made in this litigation and that it understandable. She is now working as a trainee feedstuffs specialist which involves visiting farms, some of which are in the South West of England. She readily accepted that she enjoys the work especially meeting people and dealing with cows. She also undertakes some relief milking on other farms. In my judgment it is likely that she will also be successful in this career with some fulfilment, better hours and better pay. It is however not the same as working with the Caeremlyn herd which for much of her working life to date she expected to spend the rest of her working life doing and it does not provide a wholly fulfilling use of her skills.

44. It is common ground that in assessing detriment, regard must be had to consequential benefits. On behalf of her parents a detailed schedule in total sum of £465,323.56 was put into evidence setting out sums which they had paid out for Eirian over the years. Mr Gaunt realistically accepted that many of these payments were made out of affection at the time rather than because she was working on the farm, such as those relating to education, trips abroad, marriage, divorce and medical treatment. He did not suggest that a financial balance should be struck. The most obvious benefit has been free accommodation, and in the early years free board. The value of accommodation at Henllan since 2007 has been agreed at £525 a month. She has been

able to let out her home in Ludchurch for £600 to £700 a month. Loans of just over £170,000 are secured on that property.

45. Mr Blohm accepts that account must be taken of the value of accommodation, but as he submits Eirian and her family needed somewhere to live. The financial benefit was the profit from letting out the Ludchurch property, which is likely to be a third or so lower than the rental income. There must also be taken into account in this regard the attractive lifestyle at Ludchurch, the difficulty in living at Henllan in close proximity with her parents with whom she had had difficult relationships, and the advantage to the business in her living on the farm. I accept that due weight should be accorded to these factors.

46. Amongst other relevant factors are her parents' own plans. They are now in their mid seventies. In the course of this litigation and they say because of the events which gave rise to it, they came to a decision to retire and to sell the farm and the business. However, they now say that after they eventually got their feet on the ground they have changed their minds and will die farmers. Each give detailed evidence of the physical and the administrative work which they now carry on, although of course they also employ a manager and workers. Mary Davies says that this change of heart probably came about by the summer of 2013 and accepted in cross examination that no mention is made of it in subsequent witness statements, saying that it was no one else's business. That again was not an in impressive part of her evidence, and their change of heart should have been referred to in their subsequent statements if they seek to rely upon it as now they do. In the course of this litigation they transferred the turkey business to their daughter Enfys and her husband. The profit from that business was previously what they mainly relied upon for their living, as the profit from the farming business which was often modest was traditionally ploughed back into that business. However Enfys and her husband have full time employment elsewhere and have wound up the turkey business. Since transferring it, the parent's main income, currently around £42,000 per annum, comes from the solar panels at Llanlliwe.

47. Despite the unsatisfactory way in which evidence of their intention was dealt with, the evidence of Mary and Tegwyn Davies as to their present intention regarding the farming business came across as genuine. Eirian accepted that her father is a farmer, in her words, "down to his boots." It may be that their present intention is motivated to an extent by the present dispute as to appropriate relief, but I accept that such intention is as they say it is.

48. There was a suggestion by them that to give the farm to Eirian now would be to leave them in a poor financial situation. I refer above in general terms to the present income from the farm and business. There was no detailed evidence about their overall financial position, and Mary Davies in cross examination said that it was no one else's business. They live in the five bedroom house at Caeremlyn with their daughter Eleri and her family. Both she and her husband are in full time employment. There are also buildings gardens and about 97 acres of pasture. There is no borrowing secured on Caeremlyn. 55 of these acres are used by the business and are included in Eirian's claim. She says that the remainder of Caeremlyn is worth £1.5 million, but that is not agreed and there is no valuation. On any view however it is a substantial asset. The parents now face substantial costs of the first two hearings, but there are undrawn profits from which those can be satisfied. In my view it is likely that Tegwyn and Mary Davies are in a secure financial position apart from the farm and business.

49. Another suggestion was that Eirian will not be able to manage the farm and it is unlikely that lenders will support her having regard to her lack of experience in running the farm as well as managing the herd. Borrowing from the Agricultural Mortgage Corporation, presently totalling over £1.2 million and bank borrowing is secured on the farm. There is no evidence from lenders to support this suggestion and it is clear that there is considerable equity. A business case was put into evidence on behalf of Eirian upon which she was not challenged. She has had considerable experience dealing with the herd over the years, and as recently as 2009 her parents were saying publically that she would in due course take over the business. In my judgment there is little if anything in this suggestion.

50. Further allegations of conduct were raised on each side on the issue of relief. In my judgment taken at their highest these do not amount to the sort of misconduct which should impact upon the issue of relief, given the long history of the parties' dealing with one another. The conduct alleged arises in the context of a difficult and now a very bitter relationship between the sides, and in my judgment it is not necessary to make findings on these issues.

51. Mr Blohm submits that Eirian should be awarded what was promised to her, namely the land and the business. If contrary to this primary case, that is seen as a disproportionate remedy then she would concede that 68 acres of land formerly part of Glascoed and now worth some £430,000 and 74 acres at Castell Draenog now worth some £540,000 should be retained by her parents with a proportionate part of the borrowing. This amounts to less than one fifth of the gross value of the farm, which is just under £5.5 million. After the loans are taken into account the net worth is some £4.25 million. The livestock is presently valued at just under £1.75 million and the plant and machinery at just under £0.5 million. The company which owns these assets currently has liabilities of over £2 million so the net worth of the company's asset is some £141,000.

52. Mr Blohm recognises that Eirian has made no direct contribution to the acquisition of the various parcels of land of which the farm now comprises and which her parents have purchased over the years. He also recognises that it is difficult to show a direct correlation between Eirian's contribution and the profits of the company. There are other features which have a greater impact such as TB compensation payments. He also accepts that account should be taken of any acceleration of benefit which may arise from an award now. What can be shown is her contribution to the milking herd which was the essence of the business, along with that of her parents which he accepts has been substantial. He submits that often the promisor has provided the capital asset.

53. That is clearly so, and *Suggitt* is but one example. However, I have already set out reasons why in my judgment that case should be distinguished from this. Moreover, as Mr Gaunt submits, even with the concessions, to make an award of the farm and business would be to award the vast majority of what the parents have built up over some 53 years, making only modest drawings. She has worked for about one third of the time which both of her parents worked.

54. Mr Gaunt submits that a fair solution would be to award Eirian a sufficient sum for accommodation and for a share in the farm and the business. The former could be achieved by a sum sufficient to pay off her mortgage on the Ludchurch property. If

she had become an equal partner with her parents in 1999 in the partnership which was then running the business, she would have been entitled to a third of the profits which then averaged about £22,000 per year. That would amount to some £22,000 until 2001 when she left. That, submits Mr Gaunt is generous given that she was also then paid £3,000 per year and had free accommodation. If she then on return had been given a share in the company by then formed to own and run the business, say of 25% having regard to the agreement for incremental increases in her shareholding, her share would have amounted to about £125,000. Again, submits Mr Gaunt, that is generous because it takes no account of just under £80,000 which she was paid from September 2008 to September 2012 or of the accommodation.

55. In my judgment that approach does not sufficiently accommodate the expectation and detriment which I have found and in particular those elements upon which it is difficult to place a financial value. The accommodation element of Mr Gaunt's submission does not reflect what Eirian was promised in 2007, which was that she could live in the farmhouse for life. There is no suggestion that this promise was conditional in any way upon her selling her property, and she has since let that out. Mr Gaunt's calculation of a share of the profit during the periods from 1999 to 2001 and 2008 to 2012 does not in my judgment sufficiently recognise that for substantial periods up until 2001 and from 2009 to 2012 the expectation was the Eirian would succeed to the farming business and to the herd which she loved. It does not take sufficiently into account the detriment which I have found, which goes well beyond what her parents recognise, despite the countervailing benefits. It does not take into account her parents significant role of bringing that expectation to an end in 2012.

56. In my judgment it is clear that weighing all the above circumstances involves more than just arithmetical calculation, and justice is likely to lie somewhere between the polarised positions which the parties now adopt. It is not an easy exercise to determine the precise point where it does lie. That approach may well mean that the farm and business or a substantial part of it will have to be sold. Neither side is likely to welcome that, but in view of their poor relationship the options are very limited. In my judgment the proportionate remedy is to award Eirian a lump sum in the amount of £1.3 million. That is just over or under one third of the net value of the farm and farming business depending on the impact of CGT which in turn depends how much is sold. It is, in my judgment a fair reflection of the expectation and detriment and other factors set out above.