Neutral Citation Number: [2017] EWHC 2261 (Ch)

Case No: A30LS869

IN THE HIGH COURT OF JUSTICE

**CHANCERY DIVISION**

**LEEDS DISTRICT REGISTRY**

Leeds Combined Court Centre

1 Oxford Row Leeds LS1 3BG

Date: 13/09/2017

**Before** :

HIS HONOUR JUDGE DAVIS-WHITE QC (SITTING AS A JUDGE OF THE CHANCERY DIVISION)

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**Between :**

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|  | **(1) STUART DAVID LIDDLE (on his own behalf and as Executor of the estates of DAVID WILLIAM LIDDLE (DECEASED) and EDITH WINIFRED LIDDLE (DECEASED)** **(2) JOYCE ROSEANNE LIDDLE (as Executrix of the estates of DAVID WILLIAM LIDDLE (DECEASED) and EDITH WINIFRED LIDDLE (DECEASED)** | Claimants |
|  | **- and -** |  |
|  | 1. **MARY LIDDLE**
2. **ROBERT ALLEN LIDDLE**
3. **MARTIN PHILIP LIDDLE**
4. **ANDREW STEVEN LIDDLE**
 | Defendants |
|  |  |  |

AND

**IN THE COUNTY COURT AT LEEDS Nos 20-27 of 2017**

**Before** :

HIS HONOUR JUDGE DAVIS-WHITE QC

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**Between :**

1. **MARY LIDDLE**
2. **ROBERT ALLEN LIDDLE**
3. **MARTIN PHILIP LIDDLE**
4. **ANDREW STEVEN LIDDLE**

**Applicants**

-and-

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| --- | --- | --- |
|  | **(1) STUART DAVID LIDDLE (on his own behalf and as Executor of the estates of DAVID WILLIAM LIDDLE (DECEASED) and EDITH WINIFRED LIDDLE (DECEASED)** **(2) JOYCE ROSEANNE LIDDLE (as Executrix of the estates of DAVID WILLIAM LIDDLE (DECEASED) and EDITH WINIFRED LIDDLE (DECEASED)** | Respondents |
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**Mr James Malam** (instructed by **Steel Switalskis Solicitors**) for the **Claimants/Respondents**

**Mr Sean Kelly** (instructed by **Berwin & Co**) for the **Defendants/Applicants**

Hearing dates: 4 and 5 September 2017

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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.

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HIS HONOUR JUDGE DAVIS-WHITE QC (SITTING AS A JUDGE OF THE CHANCERY DIVISION)

**His Honour Judge Davis-White QC :**

**Introduction**

1. The disputes before me turn on the construction to be given to, and effect of, a family farming partnership agreement made on 23 January 2001 (the “Partnership Agreement” or the “Agreement”) between members of the Liddle family. As at that date there were seven family members comprising the partnership. They were David, Mary, Edith, Robert, Stuart, Martin, and Andrew.
2. As is common, the partnership agreement provided that the partnership could be determined by any partner giving not less than six months notice in writing. It further provided that in the event of a partner ceasing to be a partner by reason of notice having been given, his death, retirement, or expulsion, the partnership should not determine as regards the surviving or continuing partners.
3. Clause 13 provides what was to happen in the event that a partner ceased to be a partner for any reason. It is subject to clause 12, which clause permits four of the partners: David, Mary, Edith, and Stuart (and their respective personal representatives) to assign the whole or any part of their respective shares to any one or more of the surviving partners.
4. Subject to clause 12, clause 13 provides the continuing partners to have a call option to purchase the share in the partnership of the outgoing partner on the terms there set out. It also provides the outgoing partner to have a put option requiring the continuing partners to purchase his share in the partnership.
5. Three of the original partners have ceased to be partners. Stuart gave notice of retirement as long ago as 30 October 2011. David sadly died on 8 December 2011. Edith gave notice of retirement on the 5 April 2013. Sadly, she too has since died.
6. It is now common ground that options under clause 13 have been exercised in respect of these three partners. The respective purchase price for each of the three partnership shares has now been agreed.
7. The questions that I have to address are three in number:
	1. first, has there been an acceleration of liability to pay the purchase price, such that the continuing partners are now liable to pay the full purchase price or is payment to be by instalments?;
	2. secondly, on what basis is interest payable (if at all) on one element (comprising 20%) of the purchase price?;
	3. thirdly, was the purchase price, or part of it, as regards each of David and Stuart’s shares, immediately payable prior to the service, on the continuing partners, of statutory demands in October 2016 such that the demands were valid? Those demands demanded payment of sums said to be due under clause 13 in respect of the purchase of such partnership shares. (There is a further separate issue as to whether one set of demands are defective as being made in terms in the name of “the personal representatives” of David, rather than those persons’ personal names).
8. The first two issues arise in the main partnership proceedings, commenced by Part 8 claim form in the Leeds District Registry. The third issue arises in applications in the county court to set aside the statutory demands.
9. Mr James Malam appeared for the claimants. Mr Sean Kelly appeared for the defendants. I am grateful to both of them for their assistance.

**Clause 13 of the Agreement**

1. Clause 13 of the agreement (so far as material) provides as follows:

 *“13. OUTGOING PARTNERS*

1. *(a) This clause shall apply if during the continuance of the partnership any partner shall die…. or shall retire or otherwise cease to be a partner (“the Determination Date”) (hereinafter referred to as the Outgoing Partner which expression shall where the context so admits include the Outgoing Partners legal personal representatives, assigns and successors in title) subject to the provisions of clause 12 here of the Continuing Partners shall have the option of purchasing the share in the Partnership of an Outgoing Partner on the terms contained in Clauses 13.2 and 13.3 PROVIDED ALWAYS that such call option shall be exercised only by a notice in writing given to such Outgoing Partner on or at any time within 2 calendar months following the Determination Date save where the Determination Date is the death of a partner when the notice period shall be 6 months in each case (hereinafter called “the Notice Period”).*

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

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

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

 *(b) [Costs of valuer]*

 *(c) The share of profits due to the Outgoing Partner up to the Determination Date as shown in the said account (not being profits of a capital nature or profits and drawn in any one or more previous 12 month periods expiring on the fifth April but including any accrued but unpaid salary) shall immediately on ascertainment be paid to him by the Continuing Partners.*

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

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

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

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

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

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

 *PROVIDED ALWAYS that:*

*(vi) If any instalment of the said purchase price shall be in arrears for more than 21 days of the same shall have become due and payable then the whole amount or balance of the said purchase price then outstanding shall forthwith become due and payable together with such interest as aforesaid……”*

1. It is apparent, therefore, that where a partner dies there is a six month period following his death within which the continuing partners may exercise their call option. Where a partner retires, there will be a six-month period before his notice expires and he ceases to be a partner, and then a two-month period after he ceases to be a partner during which the continuing partners may exercise their call option. In each case the period during which the call option may be exercised is called the Notice Period.
2. The outgoing partner must exercise his put option within a two-month period immediately following the period two calendar months after the Determination Date.
3. The purchase price is the net value of the outgoing partner share “as shown by” what are, in effect, adjusted dissolution accounts produced by the Partnership Accountants as required by clause 13, with partnership asset values being set by an expert valuer.
4. Payment of the purchase price is, as to 20%, when the outgoing partner (or where applicable his widow), surrenders occupation of any dwellinghouse owned by the business. The remaining 80% is to be paid by 40 equal quarterly payments. The first eight of such payments are free of interest if paid in full and on the due dates. The remaining 32 quarterly payments bear interest from the Determination Date at the rate of 1% per annum above the base rate of HSBC plc (or of the current bankers of the partnership). If a quarterly payment is not paid on the due date, interest on the outstanding sum is at a rate of 3% above the relevant base rate. If any instalment is in arrears for more than 21 days then the whole amount or balance of the purchase price then outstanding becomes forthwith due and payable, together with interest.

**Main facts leading up to the issues raised before me up to July 2016**

1. There have been a number of agreed variations to the procedure under clause 13. Thus, to take one example, Edith was for a period a continuing partner who, on the face of things, should have been one of the partners buying out the shares of Stuart and David. However, as I understand matters, it has been agreed that the now continuing partners, the defendants to these proceedings, are to buy the shares of each of Stuart, David, and Edith separately and Edith’s share is not, for these purposes, enhanced by any part of the shares of Stuart and David.
2. The other variation that took place was that, rather than preparing a balance sheet and profit and loss account as at the respective Determination Dates (but with the Partnership Assets valued by the expert) it was agreed that, for the purposes of clause 13, the accountants should use the ordinary accounting year end annual accounts for the partnership which were closest in time to the relevant Determination Date. It was also agreed that specific expert reports be used to value the Partnership Assets. Finally, it was agreed (or at least, assumed by all parties) that, instead of the Partnership accountants adjusting the available accounts and producing new Determination Date accounts, with the assets of the partnership shown at market value, the partnership accountants would produce a schedule setting out the value of the outgoing partner’s share using figures taken from the ordinary partnership accounts and showing adjustments to take into account the revalued partnership assets.
3. Most of these matters had effectively been agreed by the end of August 2015. The figures produced by the Partnership Accountants were provided to the outgoing partners in about December 2015, though they were apparently prepared some months earlier. They were disputed in a number of respects by the outgoing partners, or their representatives. First, the values of the outgoing partners’ shares were said not to include the value ascribed to the partnership by the expert valuer in respect of entitlements under the Single Farm Payment Scheme (“SFPS”). Secondly, the value of each outgoing partner’s share was, in each case, decreased by the application of one or more tax charges, which the outgoing partners said were wrongly included because they were personal liabilities rather than partnership liabilities. Thirdly the expert reports were wrongly said to have failed to take into account the value of shooting rights of the partnership. These matters were raised in points of claim dated 29 March 2016 served on behalf of the claimants, being the outgoing partners or their representatives in circumstances that I shall now go on to outline.
4. Proceedings were commenced by the claimants (the outgoing partners or their representatives) by claim form dated 18 November 2014. By that claim form a declaration that the partnership be dissolved and an order that the partnership be wound up was the relief sought. The particulars of claim refer to the call option under clause 13 having been reportedly exercised, more than six months from the Determination Date in the case of David, in respect of each of Stuart’s and David’s shares. (As I have said, there is a question whether Edith needed to be party to that exercise.) Despite the notice relating to David having been out of time the notice was said to have been agreed to be valid. It was said that no call option had been exercised in relation to Edith’s interest. However, it was asserted that she had exercised the put option. The defendants were said to have asserted that no call or put options had been exercised and there was no entitlement on the part of the claimants to have their shares bought out. The relief sought was a declaration of dissolution and order for winding up and in the alternative orders essentially for payment of the purchase price under clause 13 of the partnership deed.
5. By their defence the defendants admitted that put or call options had been served in relation to David, Stuart and Edith. They admitted that the purchase mechanism under clause 13 had “not yet been fully implemented”. It was asserted that negotiations had been entered into and that the defendants’ understanding was that the claimants had not wished the purchase ascertainment mechanism to be fully implemented while such negotiations were taking place It was denied that there was any entitlement to a winding up.
6. By counterclaim, the defendants sought a declaration that the interest of each of David, Stuart, and Edith had vested in the defendants with effect from the relevant Determination Date and sought such orders and directions as might be required to determine the value of the assets of the partnership, the capital profits of each of David, Stuart and Edith arising from the revaluation of partnership assets and the production of accounts.
7. By their reply and defence to counterclaim the claimants denied that they did not wish the purchase mechanism under clause 13 to be fully implemented and reasserted the breach of the defendants in that respect, by reason of which it was asserted the claimants were entitled to seek dissolution.
8. The proceedings came before District Judge Goldberg on 10 August 2015. His order of that date records an agreement between the parties: (a) that they would forthwith proceed to implement clause 13 of the partnership agreement; (b) that for the purposes of the retirements of David and Stuart a valuation dated 19 July 2012 produced by Lister Haigh (Knaresborough) Ltd (“Lister Haigh”) would be treated as the expert valuation report required for clause 13 (I interpose to say that I understand this had been produced for probate purposes in relation to David); (c) that the claimants would inform the defendants whether they agreed to the appointment of Lister Haigh (Knaresborough) Ltd in respect of Edith’s share and, if not, the matter could be referred to the President for the time being of the Institute of Chartered Accountants of England and Wales as contemplated by clause 13; and (d) that the defendants would instruct the accountants of the partnership to complete balance sheet and profit and loss accounts pursuant to clause 13. The district judge stayed the proceedings to allow matters to proceed with a direction for it to be listed for a further case management conference on written request.
9. On 11 March 2016, the matter again came before District Judge Goldberg. It was recorded that the remaining issues between the parties were as follows (and I paraphrase). First, what matters ought to be taken into, or left out of, account in drawing partnership share valuations consequent upon the report of Lister Haigh. Secondly, the dates upon which payments were to be made. Thirdly the commencement date for and basis of interest (if any) to be paid. Fourthly, whether the valuation of the partnership assets for the purposes of the sum payable in respect of Edith’s share, was to be conducted on the basis that the dwelling houses occupied by the defendants were to be valued with vacant possession and, if not, on what basis. A number of orders were made for the purposes of resolution of these issues including the service of points of claim and defence.

1. The claimant’s points of claim asserted, among things, that on or about the 29th August the parties had agreed that, rather than drawing up new accounts at the relevant termination dates, they would rely upon accounts drawn for the year ending 5 April 2012, amended as required by clause 13, as regards the shares of Stuart and David and for the year ending 5 April 2014, again as amended as required by clause 13, as regards the share of Edith.
2. As regards the question of the valuation of the shares in the partnership, the points of claim dealt with the position as follows. First, they asserted that shooting rights had been left out of account wrongly (and had not been valued by Lister Haigh). Secondly, it was asserted that the SFPS value had wrongly been omitted from the account. Thirdly, it was asserted that personal liability for tax had wrongfully been included in the account. (The account that I refer to here is the account drawn up by the partnership accountants purportedly showing the value of the relevant outgoing partner’s partnership share, being derived from the Lister Haigh valuation and the relevant year end partnership accounts. As I have said, the partnership accounts were not, as they should have been under clause 13, revised). However, the parties agreed before me that in effect they had agreed to, or proceeded on the basis that, this method of proceeding would be used to meet the obligations of clause 13.

1. The points of defence, among other things, asserted that the agreement was that the purchase price for each outgoing partner’s share would be determined by reference to the relevant year end accounts that I have referred to and the relevant Lister Haigh valuation that I have referred to. They asserted that such price had been determined in relation to Stuart and David by letter of 20 August 2015. As regards Edith, they asserted that such letter determined the basis of the purchase price for the share of Edith, albeit that the determination would be made once the further Lister Haigh valuation relevant to valuation of her share had been provided.
2. The defence went on. So far as the partnership assets and shooting rights were concerned, it was said that the determination of the value of the partnership assets carried out by Lister Haigh as experts was binding, save for manifest error. It was admitted that the SFPS entitlement should be included as an asset of the partnership, but did not admit that the August 2015 accountants’ valuation excluded that entitlement. It was denied that the provision for tax was a manifest error.
3. The matter came back before district Judge Goldberg on 6 July 2016. As is clear from his judgement handed down in writing on 11 August 2016, and from the relevant skeleton arguments, the three points argued before him were limited to the questions of whether the accountants’ valuations were binding; whether the expert should have valued the residential properties occupied by the defendants on a vacant possession basis or not; and finally whether interest under clause 13 ran from the dates set out in clause 13 or whether the requirement to pay interest was suspended until the purchase price had been ascertained. The question of what sums were due, and when, was not pursued.
4. District Judge Goldberg decided that the valuation of the partnership assets on the basis of an “open market” valuation, required that the dwelling houses were valued on the basis that they were unoccupied by the continuing partners; that under clause 13 the accountants (unlike the valuers) were not acting as experts and their determination of price (or more accurately, valuation of share) was accordingly not binding as an expert valuation and that interest ran from the dates set out in clause 13, notwithstanding that the purchase price had not been ascertained.

1. Two points have been raised before me regarding this judgment. The first point, raised by the claimants, is that it is said that the determination of the interest point estops the defendants from now arguing that payment of the purchase price was suspended whilst the price had not been ascertained. The second point, raised by the defendants, is that it is said the District Judge determined under clause 13 not only that the partnership accountants were not acting as experts but that their role under clause 13 was simply to produce figures which the parties might agree or the court determine and that in the absence of either of those two events occurring the purchase price was not ascertained (or liquidated) and as matter of law could not be.
2. I can deal with these points relatively briefly.
3. As regards the estoppel issue, it is true that part of the argument for the defendants was that, under clause 13, interest could only fall due from the date payments fell due, and that payment did not fall due until the purchase price had been ascertained. However, it is clear, in my judgment, that the learned Judge only decided the issue of interest and that his reasoning depended on the clauses regarding interest (especially 13(2)(d)(iv)) rather than provisions regarding payment and, in particular, the relevant issues that I have to decide which are:- (a) whether payments are accelerated under clause 13(2)(vi); and (b) at what stage the price becomes ascertained such that a statutory demand may be served in respect of the debt. It is clear that his judgment focusses upon clause 13(2)(d)(iv) dealing with the time from which interest runs on the last 32 quarterly payments. The parties have agreed that his order should be amended under the slip rule to reflect this more closely in language that they agree is appropriate.
4. As regards the role of the partnership accountants under clause 13, I am satisfied that the District Judge was dealing only with the issue of whether their product was binding on the basis that they were experts and, to the extent that a contract makes a matter subject to expert determination, such expert determination is binding. Taken out of context and in isolation, some of the language used might suggest that the District Judge was deciding that the accountants’ product pursuant to clause 13 was no more than to provide figures to aid the partners in agreeing (if possible) the purchase price. However, it has to be read in context. I will return to the nature of the accountants’ work product under clause 13 below. For present purposes, it suffices to point out that as clause 13(2)(d) states: the purchase price is to be the net value of the outgoing partners share in the partnership “as shown by the said account and balance sheet”. The partners need to agree that this is correct in the sense that if they do not agree and one or more challenges it, they are entitled to do so. However, if challenged but the determination is found to have been correct by the court then it will be found to have bound the parties and the price will have been set by their product (that is, the account and balance sheet drawn up by them pursuant to clause 13 or, in the events that happened, the statement of the value of the share taken from the expert valuation and accounts agreed by the partners to be used for this purpose).
5. On 14 March of this year, the matter being before me primarily on an appeal, I made an order determining that the SFPS value should be included in any accounts produced for the purpose of clause 13. It was not then clear to me that the parties had agreed to dispense with the accounts and balance sheet referred to in clause 13 and had instead agreed to the partnership accountants producing a schedule setting out the relevant values of the partnership shares deriving figures from the relevant year end accounts and the expert valuation reports each as agreed to be used for these purposes. I was unable on the material before me to resolve other issues regarding price (and especially the tax issues that had been raised). At that point, as recorded in my order, the parties had agreed that further accounts would be produced by the partnership accountants in conformity with clause 13. I gave liberty to apply as regards any disputes thereafter arising regarding such accounts.
6. An application was made and further directions given by me on 9 June 2017.
7. The matter comes before me in circumstances where the values of the three partnership shares in question have now been agreed. The issue is whether the full purchase price (and interest, and, if so, interest at what rate) is now due.

**The statutory demands**

1. In the meantime however, on 29 October 2016 the claimants had served eight statutory demands each dated 28 October 2016 on the four defendants. Each defendant received two statutory demands, one in respect of the purchase price of David’s partnership share and one in respect of the purchase price of Stuart’s partnership share.
2. Applications to set aside those statutory demands were issued on 4 November 2016. Although at one time in the County Court at Harrogate they have been transferred to Leeds. Those applications have also, sensibly, be adjourned to be heard at the same time as the other matters before me.

**What is now due?**

1. The issue is whether clause 13(2)(d)(ii), combined with clause 13(2)(vi), has the effect that, in each case, the full purchase price is now due. There is no dispute that the 20% of the purchase price payable when an outgoing partner or his spouse surrenders occupation of a dwelling house is now due but it is submitted by the defendants that only some of the 80% balance is due, the instalment provisions of clause 13(d)((ii) to (v) not commencing in operation until the price had been ascertained, which it has only fairly recently been, by the agreement of the parties.
2. Clause 13(2)(d)(ii) is, in my view, clear and unambiguous. However, Mr Kelly’s submission is that there is no purchase price until it is ascertained by the Partnership Accountants providing the relevant accounts and balance sheet setting out the net value of the outgoing partner’s share. In order to make clause 113(2)(d)(ii) operable, he submits that the clause has to be read as follows (insertions in italics):

“the balance of the purchase price shall be paid by the Continuing Partners by 40 equal quarterly payments the first of which shall be paid at the *later of* expiration of 2 months from the date of expiry of the Notice Period *and the ascertainment of the purchase price.*”

1. As regards the principles governing the interpretation of contracts I have been referred by Mr Kelly to *Wickman Tools v Schuler A.G.* [1974] AC 235 at 251. Mr Kelly submits that an obligation to pay instalments with the consequence that the full sum falls due for non-payment in circumstances when the purchase price has not been ascertained is, in Lord’s Reid’s words, a very “*unreasonable result*”. However, I have to bear in mind the context of the passage in Lord Reid’s speech (at 251E): “*The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear*.” The context was one where the issue in the case was the meaning to be given to the phrase “*it shall be* [a] *condition of this agreement tha*t” and whether the following terms of the agreement were ones breach of which by one party gave the other party an immediate right to rescind the whole contract. As Lord Reid pointed out, “condition” has very many meanings in different contexts. The word in question was therefore ambiguous. In this particular case, by way of contrast, clause 13(2)(d)(ii) seems to me to be clear.
2. I was referred by Mr Malam to the well-known cases of *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896 and *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619 . In the latter case I was particularly referred to the well-known seven factors emphasised by Lord Neuberger at paragraphs [16] to [23]. I also bear in mind the words of Lord Clarke in *Rainy Sky v Kookmin Bank* [2011] UKSC 50; [2011] 1 W.L.R. 2900: “*Where the parties have used unambiguous language, the court must apply it*.”
3. I am satisfied that the wording of clause 13 is clear and unambiguous. Mr Kelly’s submission in my view amounts to an attempt to imply a term rather than construe the contract, although I accept that the line between the two may at times be fine. I am also satisfied that the clause makes commercial sense in that it is workable and, from the claimant’s perspective, rational. The fact that interest, and indeed the full sum, may fall due with the consequence that interest may fall due and the full purchase price obligation be accelerated makes sense in circumstances where the ongoing partners have a great deal of control over ascertainment of the purchase price and such consequence would be an incentive for them to resolve issues relating to the purchase price and, if necessary, to make a payment on account (which they should be well placed to estimate) to avoid default interest or the acceleration clause biting. It also may be said to reflect the fact that ongoing partners are enjoying the benefit of the partnership property for which they have not paid. I also note that, in the ordinary course, the continuing partners would have a fair amount of time to consider whether to exercise their call option and therefore what the likely purchase price would be. Finally, I am strengthened in my view by the fact that where the parties wanted to make a payment dependent on actual ascertainment of a figure they were well able to, and did, so provide (see clause 13(2)(c) in relation to the profits up to the Determination Date).
4. It follows on the facts that the full purchase price now falls to be paid in respect of each of the shares of the three outgoing partners.

**Interest**

1. The issue is whether interest on the 20% element of the purchase price under clause 13(2)(d)(i) falls to be paid pursuant to contract or pursuant to s35A Senior Courts Act 1981.
2. There is no provision in the Agreement for interest to be paid on the 20% merely because it is overdue. Clause 13(2)(d)(i) makes no provision for interest at all. Clauses 13(2)(d) (iv) and (v) only deal with interest falling due in respect of the quarterly payments comprising payment of the remaining 80% of the purchase price. The question therefore is whether, on non-payment of one of the quarterly instalments and/or 20% purchase price, the full sum falls due, including the 20% element,
3. Having considered the matter carefully, my judgment is that “instalment” in clause 13(2)(d)(vi) simply identifies a portion of the purchase price payable under the clause. Accordingly, I consider that on non-payment of the 20% when it fell due under the contract and thereafter non-payment for a period of 21 days, the balance of the then purchase price then fell due. This fits with the ordinary meaning of “instalment”. It is also, in my judgment, consistent with the underlying purpose of an acceleration clause. This is particularly the case if, as I hold, the acceleration is of the whole purchase price (including the 20%). This follows from the clear words that the “whole amount of the balance of the said purchase price then outstanding shall become due and payable”. It would make little sense if the 20% element of the purchase price was accelerated in the event of default in payment of one of the quarterly instalments but not on (sufficient) default of payment of the 20% itself. I should add that although it is true that clause 13(2)(d)(i) talks in terms of paying a sum equivalent to 20% of the purchase price it is, in my judgment, clear from clause 13(2)(d)(ii) that such payment is part, and therefore an instalment, of the purchase price.
4. On the facts, this may be important because in one case, that of Edith, occupation of the relevant dwelling house was given up prior to the first quarterly payment falling due and, indeed, before the applicable Determination Date. In my judgment, in those circumstances the 20% payment fell due when the contract of purchase came into being on exercise of the relevant option. The reason for this is that the obligation to pay cannot, in my view, fall due before the contract comes into being.
5. The next question is what interest is payable on the 20% purchase price if outstanding and falling within the acceleration clause 13(2)(d)(vi)? In my judgment, although the full outstanding purchase price becomes payable under clause 13(2)(d)(vi), the interest as falling due “as aforesaid” is interest at 3% above base in respect of the quarterly instalments. The effect is that, in my view, the contract makes no provision for interest in respect of payment of the 20% element of the purchase price. In those circumstances, s35A Senior Courts Act 1981 may come into play. However, although it was suggested in submissions on behalf of the defednants that this might be at 8% (i.e. Judgment Act rate interest), there is a discretion both as to whether interest should be awarded and at what rate. For example, there is a record of awarding interest in commercial cases at a commercial rate: as pointed out in the Civil Procedure Practice 2017 (The White Book) Note 7.01.11:

*“The commercial rate is commonly used in commercial cases, including claims on bills of exchange. Historically, the Commercial Court has generally awarded interest at base rate plus one percent, unless that was shown to be unfair to one party or the other or to be otherwise inappropriate. However, there is “no presumption to the effect that that is the appropriate measure and awards of two percent above base rate are common; see Admiralty and Commercial Courts Guide para.J14.1, reflecting modern cases (Vol.2 para.2A-119.1)…”*

I am not suggesting the commercial rate will necessarily apply in this case. In my preliminary view, it is more a question of what loss the claimants can show that they have suffered which may or may not be measured by a commercial rate of interest. However, the practice of the Commercial Court shows that Judgment Act interest rate is by no means the only interest rate that the court may select when making an award under s35A Senior Courts Act 1981.

1. It may therefore be that there is no great difference between the interest rate that might be applicable under the contract regarding the 80% element of the purchase price and that awarded under s35A Senior Courts Act 1981 on the 20% element.

**The validity of the statutory demands**

1. In *Wallace LLP v Yates* [2010] EWHC 1098 (Ch); [2010] BPIR 1041, Morgan J held that:

“*Although s 268* [Insolvency Act 1986] *does not in terms refer to a sum being liquidated, s 268(1) does refer to a debt which is payable immediately. Mr Aliott submits, and I accept, that for a debt to be payable immediately, it must be, first, liquidated and, secondly, payable immediately as distinct from payable at a later date. Indeed, I have drawn attention to the form of statutory demand where the heading includes the words “debt for a liquidated sum payable immediately”.* (see paragraph [23]).

 I respectfully agree.

1. I was referred to a number of cases on the issue of whether there is a liquidated debt. There is no question but that the obligation to pay the purchase price in this case gives rise to a debt. The interesting question, considered in, for example, *McGuiness v Norwich and Peterborough Building Society* [2011] EWCA Civ 1286, as to whether breach of a particular obligation gives rise to breach of a liquidated debt obligation or breach of a contractual claim sounding in (unliquidated) damages does not really arise here.
2. In the *McGuinness* case, having considered a number of cases including *Truex v Toll* [2009] EWHC 396 (Ch), Patten LJ said,

*“[36] These authorities indicate and I think established that a debt for a liquidated sum must be a pre-ascertained liability under the agreement which gives rise to it. This can include a contractual liability where the amount due is to be ascertained in accordance with a contractual formula or contractual machinery which, when operated, will produce a figure”.*

In the following paragraph he went on to consider liquidated damage clauses and contrasted a liquidated damage claim arising from operation of such a clause with the position where damages are unliquidated.

1. Mr Malam relies on these passages in support of the assertion that once the partnership accountants had produced the accounts for the relevant agreed year end and the relevant expert valuation was to hand then it was possible to say that the purchase price regarding that partnership share had been liquidated. He says that this is because from the documents the court was in a position to calculate the correct purchase price for (or correct value of) the relevant partners’ shares (i.e. those of David and Stuart). The partnership accountants’ schedules were (in effect agreed) to replace the adjusted dissolution accounts required by clause 13. It may have been wrong but the claim was liquidated because from the documents it was possible to work out the correct values and therefore the purchase prices. However, as Patten LJ also said, “*In re Broadhurst* the measure of liability under the contract was readily calculable but that did not make it a liquidated claim”. In my judgment, it is necessary to look further.
2. Under the contract the value of the partnership shares was to be ascertained by a formula applied by the accountants and it was for them to produce the valuation by way of adjusted dissolution accounts or (as became agreed) using the expert valuation and relevant year end accounts and producing a calculation by way of a schedule of value. The valuation of the partnership share, in effect the purchase price, was to be determined by the work product of the accountants. If the valuation they produced was challenged, unsuccessfully, then in my view it could be said the debt had been liquidated or ascertained by their schedule. However, if, as is this case, the schedule they prepared was successfully challenged (as it has been, by the claimants), then the claimants cannot say that the purchase price was ascertained or liquidated at the time of service of the statutory demands. I say that the valuation has been successfully challenged. This is on the basis that, at the least, the SFPS element was not included. If I am wrong about this, then at the least there has been no determination as to whether the challenge was successful or not. As I have said, in my judgment the liquidation or ascertainment was to be carried out by the accountants. If carried out correctly, then the claim was liquidated at that point (even if the correctness had to be, and was, confirmed by later court ruling). If they carried out their job incorrectly, and their operation of the formula under the agreement was challenged successfully, then until a correct formulation was achieved (by agreement or by a revised calculation being produced or, possibly a court order determining the point) there would be no liquidation or ascertainment of the purchase price.
3. In my view, as I believe was the view of HHJ Klein (sitting as a judge of the Chancery Division) in *Blavo v The Law Society* [2017] EWHC 561 (Ch), the key phrase in paragraph [36] of the *McGuiness* case is that of “pre-ascertained liability”. In my view, there would have been no liquidated claim in the case of *Ex parte Ward* (1882) 22 Ch D 132 (considered in *McGuiness*) until the Stock Exchange rules had been operated and the relevant liability assessed. In this case I consider that the debt is not immediately payable for statutory demand purposes until the debt has been ascertained under the machinery provided for by clause 13 and that machinery was one requiring the accountants to produce the figures.
4. To meet this point, Mr Malam submitted that the debt had been ascertained or liquidated because the defendants had not denied that they were liable for the major portion of the value as put forward by the accountants (the challenge by the claimants meant that the determined value of the partnership shares was increased). However, there was no evidence, and it was not asserted, that the defendants had contractually agreed or become bound, by contract or estoppel, to accept that there was a debt for that separate sum (leaving aside whether the balance of the value once ascertained would give rise to a further debt obligation requiring immediate payment).
5. Mr Malam’s alternative submission was that, to the extent that the accountants correctly valued the majority of the value of the share they had to that extent liquidated the debt. The difficulty with that submission is that I do not see how it is possible for a debt to be partially liquidated. By agreement (or estoppel) the parties may achieve a similar effect to “partial liquidation”, but in my view the correct analysis is not that the debt is partially liquidated but that a new debt comes into being from the agreement.
6. Mr Malam accepted that in the event that the accountants produced figures based on a failure to follow the formula in clause 13 (such as using the wrong asset values and starting with accounts for the wrong period) then mere production of accounts/balance sheet purporting to comply with the clause would not amount to an ascertainment of the debt. In this case, the accounts (or valuation prepared) did not comply with the formula. At the least, the SPFV was left out of account. The court has not liquidated the actual sum due. The calculation has been shown to be wrong, at least in part. Mr Malam said that where the accountants get things substantially correct then they have liquidated the debt. However, he was unable to explain to me any principle enabling one to distinguish the two scenarios, that is that set out at the start of this paragraph in parentheses and the “substantially” correct position. All he was able to say is that it is a matter of fact and degree. In my judgment, the debt as a whole needs to be liquidated and correctly ascertained under the relevant formula by the decision maker where there is one. The mechanism may not require there to be a decision maker. The formula itself may liquidate the claim and the only question will be whether the party relying on its application of the formula has got its sums right and the debt is disputed or not. However, where the clause provides for a decision maker (in effect here the partnership accountants or, obviously, the parties agreeing the same) then the position, in my view, is different.
7. It follows that the application to set aside the statutory demands succeeds.
8. In those circumstances, I do not need to determine a further issue, which is whether statutory demands served in the name of “The Personal Representatives of David William Liddle deceased” are defective for not naming the individuals by the individual’s names. Shortly, my conclusion is that the demands are not defective. The persons making the same are identified by description rather than by individual name. However, even if I am wrong, that is the sort of defect that the court would waive, not least given the recipients knew full well who the personal representatives were, there having been ongoing litigation with them since late 2014. In this respect I was referred to *Coulter v Chief Constable of Dorset Police* [2004] EWHC Civ 1259 where there is no suggestion that demands were defective although they identified the relevant Chief Constable by description rather than her personal name. I was also referred to the dicta of Newey J in *Agilo v Henry* [2010[] EWHC 2717 (Ch) paragraph [16] which I gratefully and respectfully adopt.

Conclusion:

1. In summary, I decide that:
	1. payment of the purchase price under clauses 13(2)(d)(i) and (ii) is not delayed or suspended by the fact that the purchase price has not by then been ascertained and that in this case the acceleration clause in clause 13(2)(d)(vi) applies so that in each case the full purchase price as agreed is now due and payable;
	2. the obligation to pay 20% of the purchase price under clause 13(2)(d)(i) in respect of Edith accrued on the making of the contract pursuant to the exercise of the relevant option;
	3. no contractual interest is payable on the 20% element of the purchase price but that interest may be applied for under s35A Senior Courts Act 1981, though whether any interest and if so at what rate(s) still falls to be determined on application;
	4. The statutory demands fall to be set aside.
2. If the parties are unable to agree forms of order in the light of this judgment by 4pm on 20 September the matter must be restored for a further hearing at which all matters consequential on this order can be dealt with (including permission to appeal). For the avoidance of doubt, I extend the time for filing any appellants’ notice so that the 21 day period commences on the day that the respective order is made.