Neutral Citation Number: [2023] EWHC 2985 (Ch)

Case No: CH-2023-LDS-000001

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
CHANCERY APPEALS (ChD)

ON APPEAL FROM THE COUNT COURT AT LEEDS
BUSINESS AND PROPERTY WORK
Order of Mr Recorder Clayton dated 14 December 2022

Leeds Combined Court Centre
1 Oxford Row
LEEDS
LS1 4DW

Thursday 23rd November 2023

Before :

MR JUSTICE FANCOURT
Vice-Chancellor of the County Palatine of Lancaster

- -

Between :

JANE STEELS

Claimant/Appellant

- and -

(1) DARREN STEELS
(2) EMMA STEELS

Defendants/Respondents

- -
- -

Mr William Hanbury (instructed by **Jones & Co Solicitors**) for the **Claimant/Appellant**
Ms Holly Challenger (instructed by **Foys Solicitors Inc**) for the **Defendants/Respondents**

Hearing dates: 21 November 2023

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APPROVED JUDGMENT

This judgment was handed down via hearing at 10.00 am on 23 November 2023 by circulation to the parties or their representatives at a hearing and by release to the National Archives.

The Vice-Chancellor:

1. This is an appeal against an order of Mr Recorder Clayton made following a trial of a claim by the Claimant/Appellant, Jane Steels, for possession of a property known as The Meadows, Grove Lane, Retford ("the Property"), and a counterclaim of the Defendants/Respondents, Mr and Mrs Darren Steels, for a declaration of their beneficial ownership of or an interest in the Property under the principles of constructive trust or proprietary estoppel. I shall refer to the parties as the Appellant and the Respondents.

2. The Recorder held that the Respondents had failed to prove any constructive trust in relation to the Property but that they had proved an equity under the doctrine of proprietary estoppel, as a result of which they should be deemed to have a 27.5% interest in the equity of the Property.

3. The Appellant wished to move out of and sell the Property, as a result of her advancing years and the breakdown of her relationship with her son and daughter-in-law, and so the Recorder ordered that the Respondents could buy out the Appellant's 72.5% share within a specified time, or otherwise the Property would be sold so that the Respondents' 27.5% share could be paid to them. The Recorder gave directions for that to happen. He awarded the Respondents 70% of their costs of the trial, and granted permission to appeal against his quantification of the Respondents' interest but refused permission to appeal against his conclusion that the Respondents had established an equity by proprietary estoppel.

4. On 13 April 2023, I gave permission to appeal the decision on the existence of an equity on all but one of the grounds advanced by the Appellant.

5. There is no cross-appeal by the Respondents against the rejection of their constructive trust claim or the quantification of their equity, nor was any Respondent's Notice served seeking to uphold the decision of the Recorder on any different basis.

6. As is not untypical in such cases, the Grounds of Appeal cover all the possible bases on which the Recorder's decision might be overturned, namely that there was no sufficient promise or assurance, no detriment, no reliance and no unconscionability about the Appellant terminating the Respondents' licence to occupy so that she could sell and move to a smaller property on her own. In addition, the Appellant contended that the remedy awarded to the Respondents was disproportionate and not the minimum equity necessary to do justice to the Respondents (without saying what remedy was proportionate, assuming that the equity existed).

7. The Grounds of Appeal as drafted by Counsel were essentially the following:

    i) The Recorder was wrong in law or in his interpretation of the facts in concluding that there was a promise or assurance of sufficient strength and clarity, given that there was no promise or assurance in 2006 that the First Respondent and his brother would inherit the Property on their parents' deaths;

    ii) The Recorder failed to make any adequate assessment of the countervailing benefits to the Respondents of living in the Property for 25 years, as compared with the monies that had been spent on the Property during that time, and so erred in concluding that there was some detrimental reliance;

iii) The Recorder erred in concluding that the Appellant was acting unconscionably in that there was no or little detrimental reliance;

iv) The Recorder erred in taking a broad view of the detrimental reliance of the Respondents and in concluding that, as in other cases cited to him, the Respondents had centred their lives around the assurance of being able to live in the Property;

v) The Recorder erred in appearing to decide the counterclaim on an "acquiescence" basis when no such basis had been pleaded;

vi) The effect of the Order was that the Appellant would have to find rented property to live in, in her 70s, when she had limited means to do so, unless she could raise the value of the Respondents' 27.5% stake.

8. It can be seen that the first five Grounds of Appeal relate to the existence of the equity, and the last ground only to the appropriateness of the remedy. Despite being given permission to appeal by the Recorder in relation to quantification and remedy, the only Ground in that regard is one that does not address the quantification of the Respondents' equity in the Property as such and, on a mistaken basis, complains about the means directed by the Recorder for realising that equity.

9. The Recorder did not in fact afford the Appellant an opportunity to buy out the Respondents, as he had been told that she wanted to sell the Property in order to downsize. He gave the Respondents the opportunity to buy out the Appellant's majority interest in the Property, as they were the ones that wished to remain living there. The reality of the Order was, however, likely to be that the Property would have to be sold in order to realise the Respondents' interest. At the hearing, it emerged that the only case relating to quantum and relief that was pursued was that the Recorder was wrong not to hold that the countervailing benefits of rent-free residence exceeded any detriment, so that there was no equity in any event.

10. I will address first the appeal against the finding of an equity by proprietary estoppel and then return to the issue of remedy later in this judgment, as necessary.

11. The Recorder found that the Appellant and her late husband ("the Deceased", as he is referred to in the judgment) had been living elsewhere as a family with their two sons, David and Darren, before they bought the Property. Darren was living in the previous house with Emma, his girlfriend at the time, and David was single. The Respondents moved into the self-contained "caretaker's end" of the Property, and David had a room in the main part of the house.

12. There is no finding about the ages of Darren and David when the Property was purchased, but it is an obvious inference that they were both adults by then but were still living at home. The effect of the purchase of the Property was therefore that one family home replaced another. The Recorder found that neither of the sons made any contribution to the purchase price of the Property, but that they all got on and "it looked to be a great family arrangement" (para 58). He found that it was clear that "this was intended to be the [Appellant]'s and the Deceased's 'forever' home, a place where they planned to stay, all being well, and where, at some point, the Deceased said he wanted to be buried …" (para 59).

13. Para 60 of the judgment reads:

> "There is an issue of fact about precisely what the arrangements were when they all first moved in, although less so about the payments. Quite apart from the fact that they all had their separate 'bits' of the Property, the common understanding was certainly that they could all stay there as long as they wanted. The Claimant accepts that both she and the deceased made those assurances (W/S, para 12), but significantly, they had no idea how long that arrangement would last, and the Claimant says she always assumed that as the boys grew up they would 'fly the nest'. They certainly never discussed any contingencies, like what would happen if their relationship broke down, or if they needed to sell for any reason. The Claimant accepts that, all being well, if she and the Deceased remained in the Property down to the date of their respective deaths, it would pass to the boys, in equal shares. I think that was everyone's common expectation. I think it follows that the boys had a licence to occupy, which, or being well, was expected to be long term, and if the parents were still there on their respective deaths, they would get the Property. That is about the long and short of it. I do not accept that there were any further conversations, promising the boys a 'beneficial interest' or suggesting they could stay there forever, irrespective of the circumstances."

14. The Recorder rejected the Respondents' case that they were paying substantial sums for use and occupation or that they carried out substantial improvements over and above what would be expected in normal family circumstances. There were regular payments made, in quite substantial amounts, but these were contributions to running costs, including for power used by the First Respondent's business, which he carried on from outbuildings at the Property with the agreement of the Appellant and her late husband. The Respondents therefore were at all times living in the Property rent-free.

15. The Recorder found that in about 2006 the Respondents were looking to move out of the Property and buy themselves another house. They had £30,000 of savings and were looking to take a loan of around £50,000, to be secured by mortgage. The Recorder said at para 68 that:

> "They both said that when they mentioned this to the Deceased, he responded by asking them why they needed to buy a house and take on a mortgage, saying that they had everything there (the Property) and saying that the First Defendant would have to travel again to work. The Second Defendant says that in the end, they decided to stay put. Again, I accept this was substantially on the strength of the assurance that they could stay there, although they were saving themselves quite a bit of money."

16. The Recorder then explained how, in financial terms, the Respondents were much better off by staying living at the Property, rather than borrowing money to buy a house.

17. Para 69 reads:

> "It is notable that the Defendants did not say in evidence that if they had moved out in about 2006, they would have been 'paid out' by the Deceased and the Claimant. Neither defendant mentioned this. They were going to have

> to find the money themselves, which tends to corroborate the limited terms of the assurances they were initially given, and, again, there is no suggestion that they had 'clocked up' a beneficial interest by then."

18. The Recorder found that the Appellant had decided to leave the Property and sell it, to downsize, and to get away from the unpleasant atmosphere that had developed at home. He does not say so in terms, but it is implicit in his judgment that the Appellant's decision was a *bona fide* decision to move home, not a device to cause problems to the Respondents.

19. The Recorder expressed his conclusions at para 75 and following of his judgment. He held, in clear and strong terms, that there was no constructive trust because there was no common intention that the Respondents were to have a beneficial interest in the Property, whether based on an express agreement or inference from conduct. He was unable to deduce that a beneficial interest was the parties' intention.

20. He then turned to proprietary estoppel at para 79 and found that there was an assurance, that was "sufficiently clear", that:

> "the First [Respondent] and his brother were going to inherit the Property in the future, albeit it was conditional upon things working out, but that did not prevent the boys from acting in reliance upon it in the meantime. It seems to me that if, for example, the parents hit upon hard times and had to sell up, or they had a relationship breakdown, or if they needed to sell to pay for nursing care etc, there could have been no real objection to them selling at that stage, but it might have raised an argument whether it was unconscionable for the boys to get nothing."

21. Turning to detrimental reliance, the Recorder concluded that the payments the Respondents made and works that they carried out at their expense were not detriment incurred in reliance on the expectation that they were going to acquire an interest in the Property, and that the Respondents were "quids in" in financial terms by living rent-free at the Property for so long. However, the Recorder correctly directed himself that detriment is not just a narrow financial concept and so he had to look more broadly to see whether detriment had been incurred in reliance on the assurances that he found were given. He concluded that the longer the Respondents lived in the Property, the greater would be their reliance on it, and as they got older the harder they would find it to raise money on mortgage to buy another home. He held that the detriment to the Respondents was real and was increasing over time:

> "I think the practical reality is that if you position your life around an assurance that you are going to inherit a share in a property, you probably live to your means, which I think is what the defendants have done. Doing the best that I can, I think the defendants are some way along the scale or spectrum of detrimental reliance…. The defendants have positioned 25 years of their life around the assurance that they were going to get a share in this property. In my judgement this takes them some way along the scale or spectrum of detrimental reliance." (paras 85, 86)

22. The Recorder then tested the detriment by inquiring broadly whether repudiation of the assurance would be unconscionable in all the circumstances, and concluded that, while

it was not unconscionable for the Appellant to want to downsize and move home, what would be unconscionable would be to do that without compensating the Respondents for their detrimental reliance.

23. He therefore found that the circumstances did indeed raise an equity against the Appellant and set about quantifying it, by reference to the expectation, directing himself by reference to Guest v Guest [2022] UKSC 27, which had only very recently been decided on appeal in the Supreme Court. Given the limited challenge that has been raised to the issue of quantification of the equity and the appropriate relief, it is unnecessary for me to go into that.

24. The Recorder gave himself an impeccable direction as to the law of proprietary estoppel, so far as the creation of an equity is concerned. The first and central requirement is that of encouragement to believe that a person has or will acquire an interest in land. As summarised in Megarry & Wade's *The Law of Real Property* (9th ed.) at 15-008:

> "The owner of the land, O, must have encouraged C by words or conduct to believe that C has or will in the future enjoy some right or benefit over O's property that is not merely personal in nature. The mere fact that C acts to his or her detriment in the expectation of acquiring rights over O's land will not raise an equity in his favour unless O has encouraged that expectation … O's conduct may be active or passive, and need not be the promise of a specific right or interest, provided that it is 'clear enough' in the circumstances and concerns a right in property."

25. Using the abbreviations in that passage, if there is sufficient encouragement in relation to a right or benefit, C must then have acted to his or her detriment in reliance on the belief that C has or will acquire some right over O's land. In the absence of detriment, it is unlikely to be unconscionable for O to insist on his or her rights. However, detriment is to be viewed broadly and not as a narrow or purely financial concept. Thus, giving up a career opportunity or simply "positioning one's whole life on the basis of the assurances given and reasonably believed" may suffice (the quotation is from a case called Suggitt v Suggitt [2012] EWCA Civ 1140, to which the Recorder was directed, among other cases).

26. The final requirement, and a necessary ultimate test of whether an equity is raised against O, is whether it is unconscionable for O to act in such a way as to defeat the expectation that C had been encouraged or induced to believe. Unconscionability is assessed at the time at which O seeks to defeat the expectation that C claims was created by O, but the assessment is objective, not subjective.

27. The first question to determine is whether the Recorder was entitled to find that there had been a sufficiently clear assurance made by the Appellant and her late husband, on which it was reasonable for the First Respondent and his brother to rely.

28. The ground of appeal in this regard contends that there was an insufficiently clear and strong assurance; that the 2006 "conversation" amounted to no more than a recognition that the parties were able to continue living in the Property as long as the Deceased and the Appellant wished to live there, and that this conversation did not include an assurance that the Respondents were going to inherit the Property. The ground therefore treats the

original assurance, that the Appellant accepted making, as if it was of no consequence and only the 2006 assurance was material.

29. It is notable, first, that the Recorder expressly found that there had been no discussion about a beneficial interest in the Property, and no common intention at any time that the boys should have an interest. There is no finding of a promise or assurance to that effect. This is therefore not a case in which the Respondents and David were told that the property was theirs, in part or in whole.

30. The first assurance, which was accepted by the Appellant in her evidence, was that it was agreed that they could all live there as long as they wanted. There was nothing said about contingencies. But it was generally understood that things might happen later than meant that they would no longer be living there. It was implicit that the right to reside would be in the long term, rather than the short term, but how long it would last depended on unknown factors. As the Appellant said, her expectation was that in due course the boys would "fly the nest". The Recorder described the assurance at one point as being "in limited terms". It was therefore not an absolute assurance of entitlement to remain living in the Property until the death of the Appellant and her husband.

31. At para 60, the Recorder did not expressly find that there was an assurance given about inheritance of the Property. He described only a "common expectation" that if they continued to live in the house until the deaths of the parents, the boys would inherit the Property in equal shares. That was a perfectly natural expectation for a family in the positions of the Steels to have, and it is understandable. The Recorder found on that basis that there was a common expectation that the boys would inherit the Property in due course.

32. The other assurance found to have been made at a later time, about 2006, was when the Respondents were considering moving out of the Property and buying their own house. On that occasion, the Deceased asked them why they needed to buy a house when they had everything there, at the Property, and the First Respondent did not need to travel to work. That too is a limited assurance, and an encouragement to stay in the Property. It is implicit that the Respondents would be entitled to continue to live at the Property for the foreseeable future, in the long term; but there was no assurance made that the position would never change, or that the boys would inherit the Property.

33. In expressing his conclusions, at para 79, the Recorder said that the assurance was "that the First Defendant and his brother were going to inherit the Property in the future, albeit it was conditional on things working out" and that the qualification "did not prevent the boys from acting in reliance on it in the meantime", i.e. the assurance was of such character and sufficiently clear that it was reasonable for the First Defendant to rely on it.

34. In view of the way that the findings of fact had first been expressed at para 60 of the judgment, I asked Mr William Hanbury, who appeared on behalf of the Appellant, whether he contested the conclusion that there was an assurance that they boys were going to inherit the Property in the future. Although Mr Hanbury's focus was on the 2006 assurance (and there is no finding that anything was said about inheritance on that occasion), Mr Hanbury did not dispute the fact that such a qualified assurance of inheritance was made at the time when the Property was purchased. The qualification was understood to be the same as in relation to residence, namely that if unforeseen

events led to the Property being sold, there would be no further residence in or inheritance of the Property.

35. If that is right (and I do not seek to go behind Mr Hanbury's concession in that regard) then I do not see on what basis it can be said that that assurance ceased to have any effect after 2006. A further assurance about continued residence was made in that year, but that was not inconsistent with the original assurance and was not found to have replaced it.

36. It is however clearly the Recorder's finding that the 1997 assurance was a qualified one, not an absolute one. It depended, as the right to reside did, "on things working out".

37. Ms Challenger submitted that the original assurance in 1997 was an out-and-out assurance of inheritance after the parents' lives, but that is clearly not what the Recorder found. He found that the assurance about residing as long as they liked was subject to the understanding that events might require the Property to be sold. The assurance of inheritance was similarly subject to that qualification. If the parents in principle had the ability to sell the Property if they needed to, the Respondents did not have an unqualified assurance of inheritance.

38. The next question is whether there was evidence on the basis of which the Recorder could properly conclude that there was sufficient detriment incurred by the Respondents in reliance on the qualified assurances that were made.

39. The only pleaded case was that the Respondents paid the weekly sums that they did to the Appellant and the Deceased and carried out substantial works of improvement, decoration and repair to the Property, in reliance on the assurances. The Recorder rejected that case, holding that the works done were not done in reliance on the assurances; and further that, in overall terms, there was no financial detriment to the Respondents, given their free residential accommodation and space at the Property for the First Respondent's business.

40. In her skeleton argument for trial, Ms Holly Challenger referred to the case of Suggitt and suggested that, in addition to financial detriment, the Respondents "also positioned their life around the assurances made, giving up opportunities to move house and the First Defendant moving his business to the Property".

41. During the course of the trial, the Recorder himself raised the question of whether the Respondents had incurred detriment in reliance on the assurance by positioning their whole lives on the basis that they would be able to live at the Property and eventually inherit a one-half share of it. It was a point that he came back to in his questioning of the Respondents after their re-examination and in closing submissions. Ms Challenger gently adopted and encouraged the Recorder's enthusiasm for the point and left it to him to consider. The Recorder raised it with Mr Hanbury. At one stage of his closing submissions, Mr Hanbury said to the Recorder that the argument was not advanced in his opponent's skeleton argument "and it certainly isn't part of her sort of pleaded case but I – it's an interesting one but I don't necessarily think I can accept it".

42. The Recorder then pushed a little further, with a hypothetical example of circumstances in which the positioning of the Respondents became more prejudicial for them, when much older, and Mr Hanbury submitted that the court did not have to grapple with the issue because there simply was not the evidence to support such a case – there was no

evidence of the First Respondent about saving money or evidence of his financial circumstances. There the issue was left in argument.

43. Having heard the trial between 19 and 21 October 2022, the Recorder sent the parties an embargoed draft judgment on 27 October. The judgment was in the event not handed down publicly until 14 December 2022. The draft judgment (assuming that it was in substantially the same terms as the final judgment) made clear that the proprietary estoppel defence succeeded in part on the basis only of the Respondents' detriment in positioning their whole lives on the basis of living at and inheriting the Property.

44. Neither at the trial, nor on receipt of the draft judgment, did Mr Hanbury object that the case was being decided on the basis of a case that was not pleaded, and to which disclosure and evidence had not been directed, as he could have done. Instead, he settled grounds of appeal that did not raise that issue. It was indeed not raised in his skeleton argument for the appeal or at any stage before his oral submissions at the hearing of the appeal, when I pointed out to him that he could not pursue the argument without the permission of the court to amend his grounds of appeal.

45. After two adjournments for a short time to enable him to consider his position and draft a ground of appeal, Mr Hanbury asked for permission to amend his grounds to add a new eighth ground, as follows:

> "In so far as the Recorder found from the conversation between the Deceased and the First Defendant in 2006 that there arose an equity which had to be satisfied he erred in doing so as such equity was not pleaded in the Defence and Counterclaim."

I refused permission for the amendment.

46. It was as late an amendment as it was possible to imagine, with no notice of it having been given to the Respondents. It is not in terms focused on the change of position detriment in relying on the assurances but is intended to relate to that detriment. Reliance on it potentially altered the whole focus of the appeal and – if permitted – appeared to be a strong basis on which to argue that the order of the Recorder should be set aside. There was obvious prejudice to the Respondents in having to deal without any notice with a new, substantial argument, and in finding that the whole basis on which they had prepared to meet the appeal was overtaken by reliance on a new ground.

47. More than this, the intended and then actual reliance by the Recorder on different detriment from that pleaded was a procedural irregularity that should have been adverted to at trial, and if not at trial then on receipt of the draft judgment, if it was going to be relied on at all. Had the objection been taken early, the Recorder would have had to consider whether to permit the Respondents to amend their pleaded case to rely on it, or to alter his judgment to exclude reliance on an unpleaded case. It is not permissible for a party to acquiesce in a procedural mishap of this kind, prepare an appeal on a different basis that does not hint at the new ground of appeal, and then seek to raise it for the first time at the hearing as the basis of an appeal. It is unfair because, if permitted, it imposes an entirely new case on the Respondents and prevents the matter from being dealt with in a different way at an earlier stage.

48. The Appellant's case on detriment in substance, in the existing grounds of appeal, is nevertheless that there was no proper evidential basis on which the Recorder could conclude that the Respondents had repositioned their whole lives in reliance on the assurance that they could live in and in due course inherit a share of the Property.

49. The evidence that was given in the Respondents' witness statements did not support any such detrimental reliance. The Recorder made it clear in his assessment of the witnesses that he was not willing to give credence to what the First Respondent said, unless it was corroborated by another witness. The Second Respondent, whom the Recorder accepted to be a truthful witness, said in her witness statement that she told the Deceased about their possibly buying another house, and:

> "… he immediately questioned why we would need to buy another house or even need to have a mortgage and he talked us out of it saying that the house was a great place for Francesca and Travis to be able to have a good life growing up and questioning why would Darren want to travel again to work when he could walk just a few steps to work while we were living at The Meadows. I would explain that shortly before this Darren had moved his operations from Tickhill to the yard at the meadows and therefore he was literally just a few yards from work. In the end Darren and I decided to stay where we were on the assurance that we had the right to live at The Meadows and treat it as our own home."

There was therefore no assurance of inheritance made in 2006 that the Respondents relied on. The Second Respondent's evidence was that they decided to remain at the Property on the basis of that 2006 assurance.

50. Further, the First Respondent's business was not moved to the Property on the basis of the 2006 assurance. The Recorder found that the business was moved in 2001. There was no evidence that the First Respondent moved his business to the Property on the basis of the 1997 qualified assurance of inheritance. From the other evidence that was given, it seems clear that the business was moved for the convenience of the First Respondent since he could then avoid having to travel to work.

51. The limited evidence about the Respondents positioning their whole lives on occupation of the Property came from the Recorder questioning the First Respondent and Mr Hanbury's cross-examination of the Second Respondent.

52. The Recorder asked the First Respondent if he had tried to tot up how much money he saved by living at the Property and not having to pay rent or a mortgage, and he did not get a direct or satisfactory answer. The First Respondent then confirmed that he did not have savings put aside from saving on rent or mortgage payment (about which the Recorder expressed doubt), and he did not give a clear answer to questions about the price of the house he was considering buying. Mr Hanbury asked further questions from which it was apparent that the First Respondent was not going to volunteer information about his and his company's finances.

53. Mr Hanbury therefore asked the Second Respondent about the intended purchase and she said that they had £30,000 in savings and were intending to borrow about £50,000. She said that the Deceased had said that the land at the Property was ideal for bringing up kids.

54. No doubt the First Defendant did rely on the assurance about continued residence when deciding ("in the end", as the Second Defendant put it) not to spend money buying another house, but as the Recorder found, that was a qualified assurance and there was no assurance then about inheritance. In deciding not to buy their own house, they were not relying on any assurance that they would live there all their parents' lives and then inherit a share of the Property because no such assurance was given.

55. The Recorder's finding of sufficient detrimental reliance depended on there being an assurance of inheritance: he held that "the practical reality is that *if you position your life around an assurance that you are going to inherit a share in a property, you probably live to your means, which I think is what the defendants have done*" and that "The defendants *have positioned 25 years of their life around the assurance that they were going to get a share in this property*." That can only be a finding of detrimental reliance on the original assurance, because there was no such assurance in 2006.

56. The relevant question is, accordingly: what evidence was there that the Respondents incurred detriment from 1997 in reliance on that assurance? There was no evidence of any such detriment from 1997 to 2006. The Respondents lived in the Property for free and saved £30,000 with which they were in a position to pay a substantial deposit on a house. The First Respondent moved his business to outbuildings at the Property in 2001, but there was no evidence that that was done in reliance on any assurance about eventual inheritance. Nor was there evidence of detrimental consequences if the First Respondent could no longer keep his business supplies at the Property.

57. The detriment on which the Recorder focused was the loss of opportunity for the Respondents to buy and own their own house. But there were no findings of fact to support a conclusion that they had acted to their detriment. There was no evidence that the Respondents had spent the £30,000 of savings, and if so when, and on what. The only evidence about finances, which the Recorder considered to be unsatisfactory and unreliable, was that the First Respondent's business had £200 in its bank account and that he had nothing in his. The First Respondent was evasive about his and his business's finances and no disclosure or evidence was given about them. There appears to have been an assumption that the £30,000 had been spent. Further, there was no evidence that the Respondents, both aged 47 at the time of the trial, would have difficulty in obtaining a loan on the security of a mortgage.

58. There was also no evidence that anything to the Respondents' detriment had been done in reliance on the 1997 assurance. The Respondents decided, in reliance on the 2006 assurance of continued residence, to stay put in the Property rather than incur the financial detriment of buying a house on mortgage, and they were able to live there for a further 15 years before the Appellant decided that she needed to downsize, aged 69. If indeed the savings were spent (as to which there was no evidence), they were obviously spent in reliance on the second assurance.

59. Even if there were detrimental reliance on the 1997 assurance, that assurance was qualified: it encompassed the possibility that things would happen which meant that the parents would not be living in the Property at the end of their lives. That is what has happened.

60. The Recorder considered that it was unconscionable not for the Appellant to sell the Property and downsize but to do so without compensating the Respondents. But his view

of unconscionability was based solely on his conclusion that for 25 years the Respondents had been positioning their lives on the basis of an assurance made about eventual inheritance of the Property. For the reasons that I have given, I consider that that conclusion was not an available conclusion on the limited evidence of detrimental reliance. The case based on positioning one's whole life on the basis of an assurance of inheritance was one that had not been pleaded and only emerged incrementally and in an unsatisfactory way at trial. There was no sufficient evidence to support that case.

61. If there was any equity that arose in favour of the Respondents from the limited assurance that was made, that equity had long since been satisfied when, 15 years after the 2006 assurance, the Appellant gave notice to the Respondents to terminate their rent-free occupation of the Property for good reasons. The conclusion that it was unconscionable for the Appellant to refuse to pay the Respondents the value of their expectation based on 25 years' occupation assumes what it seeks to prove, namely that as time went by the Respondents were acquiring more of an interest in the Property.

62. For these reasons, I conclude that the Recorder should have found that there was insufficient evidence of detrimental reliance on the limited assurances proved to give rise to a proprietary interest in the Property, and that accordingly it was not unconscionable for the Appellant to seek possession of the Property on six months' notice without paying compensation to the Respondents.

63. It is unnecessary in those circumstances to say more about the ground of appeal relating to the quantification of the equity that the Recorder found to arise.

64. I allow the appeal and will hear Counsel on the appropriate orders to make in consequence.

65. The consequentials hearing, if needed, must take place within 28 days of handing down this judgment. The parties are encouraged to seek to agree the terms of an order and, failing agreement, must file a note on any disputed matters and a draft order. If the court considers that a hearing is necessary, directions will be given for it to take place.