Neutral Citation Number: [2018] EWHC 2362 (Ch)

Case No: PT-2017-000167

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST

In the estate of Mr Kashinath Vithoba Bhusate (deceased)

And in the matter of the Inheritance (Provision for Family and Dependants) Act 1975

Rolls Building, Fetter Lane
London EC4A 1NL

Date: 13/09/2018

Before :

CHIEF MASTER MARSH

- -

Between :

MRS SHANATABI KASHINATH BHUSATE (personally and as personal representative of the estate of Kashinath Bhusate deceased)	**Claimant**
- and -	
(1) DR MANAGALA PATEL (personally and as personal representative of the estate of Kashinath Bhusate deceased) **(2) MRS JEEJA THAKARE** **(3) MRS ULKA PARMAR** **(4) DR RAVINDRA BHUSATE** **(5) DR LEKHA HERBERT** **(6) DR ARVIND BHUSATE**	**Defendants** **Defendant and Part 20 Claimant**

Mark Dubbery (instructed by **Withers LLP**) for the **Claimant**
Richard Wilson QC and Toby Bishop (instructed by **Bolt Burdon Solicitors**) for the **2nd to 5th Defendants**
Eliza Eagling (instructed by **Withers LLP**) of the **6th Defendant and Part 20 Claimant**

Hearing dates: 28 and 29 June 2018

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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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CHIEF MASTER MARSH

Chief Master Marsh:

1. This claim relates to the estate of Mr Kashinath Vithoba Bhusate who died on 28 April 1990. I will refer to him as Mr Bhusate. His first wife ("Mrs Bhusate") died in 1971. The 1st to 5th defendants are Mr Bhusate's children by his first marriage. The claimant brings this claim as Mr Bhusate's third wife. The validity of the marriage between Mr Bhusate and the claimant is put in issue but the challenge is not a matter that is of immediate relevance and, for present purposes, they can be taken to have been married. The sixth defendant is the only child of Mr Bhusate and the claimant.

2. Mr Bhusate died intestate. Letters of administration were granted to the claimant and the first defendant on 12 August 1991. The estate principally comprised a property at 62 Brookside Road, Golders Green, London NW11 ("the property"), where the claimant and Mr Bhusate lived. Despite the passage of 28 years since Mr Bhusate's death, the property still remains registered in his name. The property had been originally vested in the sole name of Mrs Bhusate. Following her death, Mr Bhusate was granted letters of administration relating to her estate. He subsequently assented the property to himself as personal representative and then assented the property to himself personally.

3. By this claim, the claimant makes three primary claims: (1) that she is now the sole beneficial owner of the property; (2) in the alternative, that she and the defendants became equitable co-owners of the property; (3) in the further alternative, she says that she is entitled, as against Mr Bhusate's estate, to her statutory legacy and a capitalised life interest, plus interest at 6% per annum since the date of Mr Bhusate's death.

4. The claimant has a secondary claim under the Inheritance (Provision for Family and Dependents) Act 1975 ("the Inheritance Act") by which she asserts that at the date of Mr Bhusate's death he was domiciled in England and Wales and that his intestacy failed to make reasonable financial provision for her. She seeks an order for reasonable financial provision out of the estate. The Inheritance Act requires an applicant to issue a claim within six months of the grant of probate or letters of administration and the period for issuing such an application expired over 26 years ago. The claimant applies under section 4 of the Inheritance Act for permission to bring a claim out of time.

5. The 1st defendant has not actively participated in the claim other than to serve a witness statement. The 2nd to 5th defendants defend the claim and they counterclaim for relief, including an order under section 50 of the Administration of Justice Act 1985 for the removal of the claimant and first defendant as administrators of Mr Bhustate's estate and for orders concerning Mrs Bhusate's estate.

6. The sixth defendant does not oppose his mother's claim but says that, if his mother's claim fails, he will by his counterclaim and Part 20 claim against the 1st to 5th defendants ask the court to declare that the property is beneficially owned by the claimant and himself, either by dint of a common intention constructive trust or by the operation of proprietary estoppel. In the further alternative, he seeks an order for an account against the 1st to 5th defendants relating to the expenditure he has incurred in maintaining the property.

7. Pursuant to their application notice, the 2nd to 5th defendants apply for orders:

> "2. That the Court strike out paragraphs 7, 15 to 19 of the Claimant's details of claim and paragraphs 5 to 8 of the 6th Defendant's Defence and Counterclaim pursuant to CPR 3.3(2)(a) because they disclose no reasonable grounds for bringing a claim. Further and in the alternative that the 2nd to 5th Defendants have summary judgment on the issues therein pursuant to CPR 24.2 because the Claimant and the 6th Defendant have no real prospect of success on the issue and there is no other reason why the issues should be disposed of at trial.
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> 3. That the 2nd to 5th Defendants have summary judgment on the issues of:
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> a. the removal of the claimant and the 1st Defendant as personal representatives;
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> b. the grant of administration of their mother's estate;
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> c. a declaration that their father's estate holds the Property on trust for their father's estate and their mother's estate.
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> 4. That the Court determine the Claimant's application to extend time pursuant to section 4 of the [Inheritance Act] as a preliminary issue."

8. It was agreed at the hearing that the court would not determine the claimant's application to extend time under section 4 of the Inheritance Act until after this judgment has been handed down because her claims in relation to the property have the potential to affect the outcome of that application.

9. The test for an application to strike out a statement of case under CPR 3.4(2)(a) need hardly be stated. The 2nd to 5th defendants must satisfy the court that the Part 8 claim form does not show reasonable grounds for bringing the claim; put in simpler terms, they must show that the claim is bound to fail. Sometimes, a respondent to an application to strike out a statement of case will apply to amend the statement of case to cure possible defects. Where this happens, the court will normally consider both applications together to form a view about whether the claim, or defence, is bound to fail with the case put at its highest. In this case, the claimant and the 6th defendant stand by their claims in their original form. However, the court may decline to strike out a claim, even if it considers on the current state of the law it is bound to fail, if it can fairly be said that the legal basis of the claim is in an area of developing jurisprudence and the strength of the claim ought to be tested against facts found at a trial: see *Richards (t/a Colin Richards & Co) v Hughes* [2004] P.N.L.R. 706 per Peter Gibson LJ at [22])

10. Under CPR 24.2, the applicants must show that the claim has no real prospect of success and that there is no compelling reason why the claim should be tried. The jurisprudence relating to CPR Part 20.2 is well-established. A convenient summary of the principles can be found in the judgment of Lewison J (as he then was) in *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 (Ch) (approved by the Court of Appeal in *A C Ward & Son v Caitlin (Five) Limited* [2009] EWCA (Civ) 1098). It is unnecessary for me to set out those principles in this judgment although, where necessary, I will refer to them in the course of discussing the issues that arise for determination.

11. There is some overlap between the court's powers under CPR 3.4(2)(a) and CPR 24.2. In the case of the former, the focus is on the statement of case and the court will normally assume the respondent will be able to establish the facts that are pleaded. Under the first limb of CPR 24.2, the court is entitled to evaluate the respondent's case in a broader manner, provided it avoids conducting a mini-trial. The threshold for success on a strike out is considerably higher than on an application for summary judgment. That a claim is bound to fail is much harder to establish than that it has no real prospect of succeeding.

12. I would add an observation in relation to an application for summary judgment brought by a defendant to a Part 8 claim. Part 8 requires the claimant to provide the evidence that is relied upon with the claim. Although there may be cases in which a claimant will be permitted to file supplementary evidence, the court has the claimant's complete case. It is a reasonable starting point for the court that the claimant's case has been put at its highest and, unless the claimant is able to point to material evidence that has not been brought forward, there is no reason to consider what further evidence might be available.

13. It is mandatory to bring a claim under the Inheritance Act using a Part 8 claim form and the claimant was right to proceed in that way, despite seeking wider relief that might more naturally have been claimed using the Part 7 claim procedure. The Part 8 claim form is accompanied by a document entitled "details of claim". Rule 8.2 requires the claimants to state (amongst other things):

> "(b) (i) the question which the claimant wants the court to decide or
>
> (ii) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;"

14. Rule 8.5(1) requires a claimant to file any written evidence he or she intends to rely at the same time as filing the claim. Thus, the claimant's case should be complete at the point of issue.

15. The requirements of Rule 16.4 do not apply to a Part 8 claim form because particulars of claim do not have to be served. However, it is an essential premise of any claim that the defendant must be able to understand the basis upon which the claim is put forward, the core facts that are relied on and the relief that is sought: see *Prudential Assurance Co Ltd v HMRC* [2016] EWCA Civ 376 [20]. Although, strictly, Rules 16.5(3) and (5) do not apply in a Part 8 claim, I consider they can be applied by analogy if it is just to do so.

16. It is, however, perfectly proper for a claimant in a Part 8 claim to provide only a brief summary of the basis upon which the claim is pursued in the claim form with a fuller explanation, and the evidence supporting it, in the witness statement or statements filed with it. When considering whether the claimant has shown reasonable grounds for making her claim, it is appropriate to take both the claim form and the witness statement, or statements, together. The same approach applies to the 6th defendant's claim. For the purposes of an application by defendants under CPR 24.2, the court will have regard, not just to the claimant's case and the evidence in support, but also to any other evidence that is available or is reasonably likely to become available.

17. In view of the nature of this claim, and the relief that is sought, the parties' respective positions needed to be pleaded with a degree of formality so that they could be clearly understood. At the hearing held on 18 January 2018, I directed that the claim should continue under Part 8 until further order and that the defendants were to file and serve points of defence and any counterclaim with the claimant serving a reply and defence to counterclaim. Part 8 does not contemplate a procedure in this form[1]. However, it is a convenient way of proceeding in some cases because it obviates the need to convert the claim to a Part 7 claim which can lead to wasted expenditure. It is, for example, common to direct the service of points of claim and defence where an issue arises within a Part 8 claim that requires a trial. It is not in doubt in this case that the claimant's "details of claim" were intended to be treated as her points of claim and the defendants served their points of defence based on that premise.

18. In light of the very serious consequences for the claimant and the 6th defendant if the application succeeds, it is necessary to review the claim, the Part 20 claim of the 6th defendant and the supporting evidence fully. I start with the material parts of the claimant's details of claim:

> "3. A grant of letters of administration in the deceased's estate was taken out of the Principal Registry of the Family Division by the Claimant and the First Defendant on 12 August 1991. That grant certified the gross value of the deceased's estate to be £137,917.78 and the net value to be £137,449.70.
>
> 4. As his widow, the Claimant's entitlement in the deceased's estate was a statutory legacy of £75,000 and a life interest in one half of the balance of his estate. The applicable interest rate is 6%.
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> 5. The claimant exercised her right to capitalise her life interest by notice to the First Claimant dated 16 March 1992.
>
> 6. The deceased's estate was principally comprised of his dwelling house at 62 Brookside Road, London NW 11 (the Property). The Property was solely owned by the deceased and was the Claimant's matrimonial home. At the time of the deceased death it was occupied by the deceased, by the Claimant and by the Fourth, Fifth and Sixth Defendants.
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> 7. In or about July 1990 the Claimant was given to understand by a relative of the deceased's first wife, Vishwanath Dahake that the Fourth defendant, on behalf of the other siblings, had expressed the view that she might remain in the Property for as long as she wished.
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> 8. In September 1990 the Claimant and the Sixth Defendant became the sole occupants of the property.
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> 9. On 8 July 1992 the Claimants then solicitors, Kannan & Co, wrote to Messrs Rubens Rabin & Co for some or all of the Third, Fourth and Fifth Defendants setting out their calculation of the Claimant's interest in the estate based on hypothetical sale prices for the Property.

[1] Save under Practice Direction 8A paragraph 15.14(1)(e).

10. No agreement was reached between the parties as to the distribution of the estate and the Claimant was advised by her solicitors that the Property needed to go on the market for sale. The Property was marketed for sale between June 1992 and August 1994. The sole offer received for the Property was £120,000 in May 1994.

11. In February 1993, the Second Defendant's solicitors, Francis & Solomons, expressed concern that the Claimant was not offering to compensate the estate for her occupation of the Property.

12. After February 1993 no Defendant suggested or demanded that the Claimant should be making payments for her occupation of the property.

13. The Claimant was content for a sale to proceed but the Defendants took the view that the market was such that a sale would be disadvantageous.

14. Had a sale proceeded in 1994 at £120,000 the Claimant would have been entitled to the entirety of the equity in the Property pursuant to her entitlement in the deceased's estate including accrued interest.

15. In the premises the Claimant became beneficially entitled to the equity in the Property reflecting her entitlement in the deceased's estate.

16. In the alternative the court should infer, alternatively impute to the parties, a common intention that the Claimant became the sole beneficial owner of the Property by dint of a resulting, alternatively a constructive, trust.

17. Further in the alternative, in 1994, by dint of a resulting, alternatively a constructive trust the parties became equitable co-owners of the Property. The parties' shares therein are:

(a) In proportion to their contributions thereto being reflected in their shares of the deceased's estate which they elected to retain in the property; alternatively,

(b) Such share as the court might deem just by reference to their entire course of dealing in relation to it.

In either event the Claimant will say that the Court might infer, alternatively impute to the parties, a common intention that the First to Fifth Defendants interests in the Property crystallised in 1994, or at such later date as the court might deem just, such that the Claimant and the Sixth defendant only were to enjoy the benefit of any subsequent increase in the value of the Property.

18. The court might infer or impute such intentions from:

(a) the failure or refusal of the 1st to 5th defendants to make any contribution towards the maintenance and upkeep of the Property;

(b) the Claimant continuing to the best of her ability to maintain the Property and effect repairs to it;

(c) the Sixth Defendant assisting the Claimant in this regard; and

(d) the assurances and representations made by one or more of the other Defendants to the sixth defendant that:

(i) the Claimant might live in the property for so long as she wished;

(ii) that the property might fall down for all they cared;

(iii) that they were content to transfer any interest they might have to him without compensation.

19. Further in the alternative the Claimant's entitlement in the estate is her statutory legacy and capitalised life interest plus interest at 6% per annum since the death of the deceased."

19. The claimant has not made the task of the court an easy one. Her claim to be a beneficial owner of the property has several iterations, both as to the outcome and the route that leads to it:

(1) Case 1: She claims to be the sole beneficial owner of the property by virtue of the facts and matters pleaded in paragraphs 3 to 14 of her claim. The outcome asserted by the claimant is said to be the legal consequence of the events to which she refers.

(2) Case 2: The same outcome is arrived at, based on the same facts and matters, either by a resulting trust, or alternatively, by a constructive trust, based on the common intention of the parties.

(3) Case 3: Next, the claimant says that in 1994, her joint interest in the property with the defendants crystallised by the creation of either a resulting or constructive trust. Again, this is said to be the consequence of the common intention of the parties. She does not specify the proportions in which the interests are held but provides two alternative ways in which those interests are to be established.

20. The 6th defendant's starting point is that he admits the facts the claimant relies on and he supports her case. The way it is put in his points of defence is that he does not oppose the relief sought by the claimant and does not dispute her entitlement to the whole beneficial interest in the property. Thus, he supports Case 1 and Case 2. (On one reading of his defence he also supports Case 3). In his Part 20 claim, he puts forward another variation; that he is joint owner of the property with his mother to the exclusion of his siblings. But that claim is only to be pursued in the event that his mother's claim to be the sole beneficial owner fails.

21. The Amended Part 20 claim is expressed in the following way:

"5. As stated at paragraph 5 [of the claimant's claim], the Claimant exercised her right to capitalise her life interest by notice to the First Defendant dated 16 March 1992. Given that the deceased's estate was principally comprised of the Property, at that time all parties had an interest in the Property. But the parties' common intention altered significantly over the years. The First to Fifth Defendants have ignored the Property and have not attempted to invest

in it, maintain it or repair it. They have never sought for the Property to be sold or let out. They allowed the Claimant and the Sixth Defendant to act in all respects as sole beneficial owners of the property.

6. In the premises the court should infer, alternatively impute to the parties, a common intention that between them the Claimant and the Sixth Defendant were entitled to the whole beneficial interest in the Property. In reliance on the aforesaid common intention, the Sixth Defendant has acted to his detriment, in particular since 2000, the Sixth Defendant has spent £52,032.41 on repairs and maintenance to the Property and approximately £7,680 on insuring the Property.

7. Alternatively, in the circumstances a proprietary estoppel arises so that the First to Fifth Defendants are estopped from denying that between them the Claimant and the Sixth Defendant are entitled to the whole beneficial interest in the property."

22. One of the notable differences between the claimant and the 6th defendant is that, whereas the claimant focuses on 1994, the 6th defendant is more flexible about when he says the beneficial interests crystallised. He says the parties' common intention altered "over the years" and relies on the failures of the 2nd to 5th defendants to show an interest in the property over a period. He was only 9 years old in 1990 when his father died.

23. Section 46 of the Administration of Estates Act 1925 ("AEA 1925") provide an essential starting point for considering these claims. Under section 33 the administrators held the property for the estate on trust and under section 46 the residuary estate of the deceased was charged with the payment to the claimant of the statutory legacy applicable at the time of Mr Bhusate's death (£75,000), together with interest at 6% from the date of death. In addition, she was entitled to a one half share of the residuary estate in trust for her absolutely. She had both duties as an administrator and an entitlement as a beneficiary.

24. The claimant and the first defendant obtained assistance from Kannan & Co Solicitors to obtain letters of administration. Subsequently, and not entirely comfortably, the firm acted for the claimant alone in relation to her personal interests as against the estate. Francis and Solomons were instructed to act on behalf the 2nd defendant and Rubens Rabin & Co were instructed to act on behalf of the 4th defendant. Some correspondence from that era has survived, although it is clearly incomplete.

25. On 3 December 1991 Kannan & Co wrote to the 4th defendant to inform him that he was entitled to a share in the estate. On the same day they wrote to the 2nd defendant saying it had been agreed she would transfer her interest in the residuary estate to the sixth defendant. A draft deed to implement that agreement was prepared. However, the arrangement was not pursued. In any event, the letter and draft deed clearly indicate that, as at December 1991, the parties considered Mr Bhusate's children were entitled to a share of the estate in accordance with section 46 AEA 1925, rather than a share in the property.

26. The claimant exercised her entitlement under section 47A AEA 1925 to capitalise her life interest in the estate by service of notice on her co-administrator on 16 March 1992.

27. On 8 July 1992, Kannan & Co wrote a long letter to Rubens Rabin & Co setting out the likely effect of the capitalisation of the life interest. However, they emphasised that the figures in their letter were merely estimates based on a number of assumptions. The value of the property used for the purposes of their letter was £158,000 and the value of the estate was taken to be (rounded) £163,500. On 15 July 1992, Francis and Solomons wrote to the second defendant commenting on Kannan & Co's letter. They said the calculations were remarkably accurate but pointed out that the claimant continued to live in the property rent free and suggested that she was 'trying to have it both ways'. On 4 August 1992 they repeated the same message in a letter to Kannan & Co, saying that the claimant wanted both the benefit of rent free accommodation and interest on her statutory legacy. On 18 February 1993, Francis and Solomons wrote along similar lines and to similar effect. The letter refers to "general equitable principles" and to the "interests of the beneficiaries" but from the context, these are not a reference to equitable interests in the property or other choate interests.

28. There was a recession in the early 1990's and the property market was stagnant following a reduction in the value of properties. The value of the property was discussed in the correspondence and the property was placed on the market in 2003. In November 1993 the claimant's solicitors stated that she had no objection to the property being sold for a sum between £120,000 and £130,000. By April 1994, there was a third party offer to purchase the property for £135,000. The correspondence, however, is inconclusive and no offer was accepted. The claimant says the 1st to 5th defendants did not agree to a sale at that price.

29. The claimant's Case 1 relies on the property having been marketed between June 1992 and August 1994 and there being only one offer during that period of £120,000 in May 1994. No doubt this was the claimant's recollection when the claim was prepared. Subsequent disclosure has shown that there was an offer of £135,000 in April 1994 and the error in her claim is accepted by the claimant. She has not applied to amend her claim.

30. The claimant's witness statement adds very little to the case she makes in the details of claim. She describes discussions with some of the first to fifth defendants in the period up to 1992 and she recounts that in 1990 a relative of the deceased's first wife told her that the fourth defendant had said:

> "I don't care, however long she [the claimant] is alive, leave her in it [the Property]"

31. She makes a number of additional points describing the period from 1994 onwards:

> (1) "As time went on …" the 1st to 5th defendants lost interest in the property.
>
> (2) She was told that if the value of the property was taken at the probate value, her "entitlement is to all of the value in the property."
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> (3) She and the 6th defendant had lived alone at the property since 1990 and had paid for its upkeep and maintenance.
>
> (4) She understands that on one occasion, the 4th defendant told the 6th defendant that so far as he was concerned the property was nothing to do with him and could

> fall down. However, this assertion is not mentioned in the 6th defendant's statement.
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> (5) When the 6th defendant became an adult, he tried to agree with his siblings for the property to be transferred to the claimant with or without him. "Whilst I understand that at various times all of them expressed agreement. At least some of them have now changed their minds."

32. The 6th defendant's evidence deals with two main matters. First, he says he and his mother have spent nearly £60,000 (most of the expenditure is by him) on the property. He has produced a spreadsheet showing the work carried out and when it was undertaken, the cost of the works and who paid for it. There is a gap between 2001 and 2007 when no works were carried out. Secondly, he recounts conversations with his siblings in about June 2004 concerning the poor condition of the property and the need for urgent repairs. He says he rang each of them in turn. He says: "No one offered to help me with the maintenance or asked about what repairs were needed, even though I said that a lot of work needs to be done."

33. During the same period (it may have been in the same conversations), the 6th defendant spoke to his siblings about trying to resolve the position concerning the house generally. He says:

> "My recollection is that at that stage I thought that my mother had a right to most of the Property and that the half-siblings and I had some share of the Property. Insofar as I gave it any thought I probably thought that my share was greater. Out of family obligations and respect, I offered to 'buy out' their shares so that my mother and I could move on with our lives. I had no idea of the true legal position."

34. He goes on to say that no agreement was reached and then "… sometime later [the 4th defendant] called me to say that the deal was off. As the eldest son I believed he was speaking for all the half-siblings, apart from [the 1st defendant]."

The applicants' case

35. The applicants' case starts with three core propositions:

    (1) The claimant and the 1st defendant, as administrators, were subject to fiduciary duties and under duties to preserve the estate, to get in any assets and to distribute the estate.

    (2) It was their responsibility as administrators to keep the property in repair, in relation to which they had a right of indemnity from the estate.

    (3) The estate remains unadministered and a beneficiary has no choate beneficial interest in property forming part of an unadministered estate. The sole entitlement is to due administration of the estate: see *Re Hemming* [2009] Ch 313 at [22] to [30]. The exception is where there has been an appropriation or an assent and there has been none here.

36. The claimant admits her obligation to administer the estate. She says the property was marketed for sale and the sale was halted at the express request of the defendants. The

second proposition does not appear to be controversial. The third proposition requires further consideration in view of the position taken by the claimant.

Case 1

37. The 2nd to 5th defendants say that the claimant was only entitled to her statutory legacy and capitalised life interest. She had no beneficial interest. No appropriation or assent has been pleaded, or relied on, and even if the claimant were to rely on an appropriation or an assent to herself, it would be subject to being set aside under the rule against self-dealing.

38. Mr Wilson QC submits that an assent in writing would have been needed, relying on *Re Kings' Will Trusts* [1964] Ch 542, per Pennycuick J at 547-8 and section 36(4) of the Administration of Estates Act 1925. Mr Dubbery, who appeared for the claimant, refers in his skeleton to the possibility of there being an equitable assent (albeit the point is not pleaded). He relies on *In Re Hodge* [1940] 1 Ch 260 per Farwell J at 264 and *In Re Edwards' Will Trusts* [1982] Ch 30 per Buckley LJ at 40F:

> "An assent to the vesting of an equitable interest need not be in writing. It may be inferred from conduct."

39. It seems to me, however, that it is unnecessary for the court to consider, in relation to the claimant's first case, whether or not an equitable assent might have occurred because the point has not been pleaded. The claimant has not put forward an amended claim for the court to consider and so the point does not arise. In that regard, it is just in this case to apply the rules in CPR 16.5(3) and (5) by analogy. The claimant has the assistance of solicitors and counsel. It is not right that the claimant should be able to put forward a new case based upon submissions contained for the first time in Mr Dubbery's skeleton argument.

The rule against self-dealing

40. The so-called rule against self-dealing is of peripheral relevance to this aspect of the claim and of rather greater relevance to the applicants' case concerning Mrs Bhusate's estate. It is, however, convenient to deal with it here.

41. The applicants rely on the decision in *Kane v Radley-Kane* [1999] Ch 274. In that case the deceased died intestate and his widow was appointed sole representative of his estate, which included shares in a private company. The shares were valued by the Inland Revenue at £60,000 and the entire estate at £93,000. The widow was entitled to a statutory legacy of £125,000 and a life interest in half of the residuary estate after payment of her legacy. The widow treated herself as being entitled to all the assets in the estate, including the shares, in part satisfaction of her legacy. However, she subsequently sold the shares for £1,131,438, vastly more than her statutory legacy.

42. At p.279G to 280A of his judgment, the Vice-Chancellor cited with approval a passage from *Underhill and Hayton, Law of Trustees* (15th ed.) which provides a summary of the self-dealing principle. (In the 19th ed. the principles are summarised at paragraph 55.1). A disposition of trust property is voidable by a beneficiary 'ex debito justicae', however fair it may be, unless one of a number of saving factors apply (including consent from the beneficiaries or approval being obtained from the court). One of the

saving factors is described as the existence of "very exceptional factors" (described sometimes as "very exceptional circumstances"). It was not suggested by any party in that case that there were exceptional circumstances and, since none of the other factors were operative, the transfer of shares was set aside. The Vice-Chancellor accepted, however, that a personal representative could satisfy his or her own legacy out of cash or assets that were equivalent to cash such as government stock or quoted securities; but unquoted shares were not equivalent to cash.

43. An example of very exceptional circumstances can be seen from the decision of the Court of Appeal in *Holder v Holder and others* [1968] 1 Ch 353. In *Holder* 'V' was one of the deceased's 10 children and an executor of his will with one of his siblings. The deceased's will devised his two farms on trust to be divided equally between his widow and his children. V purported to renounce his executorship by deed so that he could buy the farms. However, his renunciation was ineffective because he had been involved in the administration of the estate. No objection was taken at the time to his purchase of the farms which were sold to V at an auction in July 1960 in the presence of the plaintiff and his solicitor. Some three years later the point was taken against and the plaintiff applied to have the sale set aside. The Court of Appeal rejected the claim. Harman LJ observed at p 395B that:

> "The plaintiff is asserting an equitable and not a legal remedy. He has by his conduct disentitled himself to it."

44. In a similar vein, Danckwerts LJ said at p399F:

> "… on general equitable grounds I am of the opinion that in the present case the transaction should not be set aside. The transaction is not void. It is one which is voidable and is liable to be set aside if a proper case is made out for that relief."

(1) In my judgment, some care must be taken to qualify a statement that the rule against self-dealing entitles an interested party to apply to set aside the transaction 'ex debito justicae' just as the authors of Underhill and Hayton have done. Although it is right that a transaction involving self-dealing will generally be set aside, that outcome does not invariably follow. The court is entitled to enquire about the circumstances in which the self-dealing occurred in order to see if they can properly be characterised as being exceptional. That approach is consistent with the decisions in *Kane v Radley-Kane* and *Holder v Holder* and it does nothing to dilute the importance of the rule. It remains the case that the circumstances in which the rule will be disapplied are likely to be rare.

45. I would observe that although the rule against self-dealing (and I think it is due to its importance properly described as a rule) will not be departed from lightly, it is subject to exceptions and it is not helpful to say that it applies ex debito justicae for the reasons given by Danckwerts LJ in *Holder*.

Cases 2 and 3

46. The claimant's Case 2 and Case 3 are based upon a resulting or common intention constructive trust being imputed or inferred. The first point made by the 2nd to 5th defendants is that the claimant is not entitled to put forward alternatives that are contradictory with each other: see the judgment of Patten J in *Clarke v Marlborough Fine Art Ltd* [2002] 1 WLR 1731 at [23]. On the one hand the claimant says she is entitled to the entire beneficial interest but she goes on to say that she and the 6th defendant are joint beneficial owners. There is no difficulty, it is submitted, where a party seeks to draw alternative conclusions from the same set of facts; but it is not possible for a claimant to put forward alternative facts which lead to different conclusions. This is unlike a situation in which the issue is as to the extent of the beneficial interest. Case 2 is put on a different basis and relies on different facts to Case 3.

47. The claimant relies on four different common intentions: (i) that she is sole beneficial owner; (ii) that the parties held the property in proportion to their shares in the estate in 1994; (iii) that they held it in some other shares; (iv) that the interests of the 1st to 5th defendants became fixed in 1994 "or such later date as the court shall deem just" and only the claimant and the 6th defendant should have the benefit of increases in value since that date.

48. Mr Wilson QC further submits that the concept of resulting trusts has no bearing on the facts that are pleaded and that the only two species of resulting trust are those explained by Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington LBC* that are summarised by the authors of *Lewin on Trusts* (19th ed, at 17-005). He points out that it not the claimant's case that she contributed to the purchase of the property and there was no failed disposition of the beneficial interest. In those circumstances, he submits that the resulting trust claim is hopeless.

49. He also submits that common intention constructive trusts cannot be imputed. They may only be inferred. If, on analysis, the court concludes that it can infer an intention to create a constructive trust, the shares in which the beneficial interests are held may be imputed by the court: see the joint judgment of Lord Walker and Lady Hale in *Jones v Kernott* [2012] 1 AC 776 at [31].

50. The claimant invites the court to infer the intention for the claimant to be the sole beneficial owner, or to be a co-owner with the 6th defendant, from the facts and matters that are set out in paragraph 18. The claimant's case is based on inference and Mr Dubbery places reliance on the approach adopted in *Jones v Kernott*. However, the differences between the facts in *Jones v Kernott* and this case are marked. Although Mr Bhusate and the claimant were co-habitees during his lifetime (nothing turns on whether there were married), that state ended with his death. It is not said that the claimant acquired a beneficial interest prior to Mr Bhusate's death. The property is not now a domestic family home shared between persons in a relationship. In *Jones v Kernott* the family home had been bought in joint names and the court was searching to find the beneficial interests. It was not in doubt that the parties had a joint beneficial interest. The court was concerned with their common intention both at the time of purchase and as it later changed, the major catalyst for a change in their intentions being the purchase of his own home by Mr Kernott. Here, the starting point in this claim is an intestacy with the sole beneficial interest being that of Mr Bhusate at the date of his death which passed to

the administrators of his estate. Had all the parties who were beneficiaries on the deceased's intestacy used clear words or acted unequivocally, the court might be able to find a common intention about the beneficial interests. The 2nd to 5th defendants say that there is no pleaded basis, or evidence, upon which such a common intention can be found.

51. Taking the remaining matters relied on by the claimant in turn, Mr Wilson QC submits:

(1) The failure of the 1st to 5th defendants to make any contribution to the maintenance and upkeep of the property is merely passive. As to the allegation that there was a refusal to make a contribution, there is no pleaded case about who refused, when it was refused and how the refusal was communicated. And the evidence does not assist the claimant. At best there is evidence that the claimant "understood" the 4th defendant said the property could fall down. The 6th defendant does not mention this occasion. His evidence is that the defendants did not offer to help with maintenance, not that they refused to do so. But, in any event, the fundamental point made on behalf of the 2nd to 5th defendants is that they had no legal obligation to make a contribution. It was the duty of the claimant and the first defendant as administrators to preserve the property and to pay for its upkeep, subject to a right of indemnity from the estate.

(2) The efforts made by the claimant to maintain the property are referrable to her position as administrator. She was in occupation of the property without making any payment for it.

(3) The fact that the 6th defendant helped the claimant to maintain the property does not advance the claimant's case.

(4) Reliance is placed upon three "assurances and representations" without providing any particulars of who provided them, when and by what means. The three assurances and representations are:

(i) ***That the claimant might live in the property as long as she wished.*** This is not supported by the claimant's witness statement and no reference is made to paragraph 7 of the claim. In any event, an assurance in 1990 communicated through a relative of the deceased's first wife emanating from the 4th defendant is of limited probative value. No basis for the 4th defendant being authorised on behalf of all the defendants is given. The 6th defendant's witness statement does not support the claimant's case on this point.

(ii) ***That the property might fall down for all the defendants cared.*** This appears in the claimant's statement as something the 4th defendant said to the 6th defendant. However, he does not mention it.

(iii) ***That they were content to transfer any interest they might have without compensation***. This is not supported by the claimant's statement or the correspondence. The 6th Defendant's statement evidences some engagement with the defendants in 2004 but on the basis that the claimant and the defendants all had a share in the property. The 6th defendant proposed that their interests would be bought out. Although he says that two of the defendants said they would agree to transfer without consideration this falls some way short of all of them agreeing. And it seems not long after the 4th

> defendant said the deal was off. Even if the assurances were sufficient, the claimant would have to show there was reliance in a very short period and, as noted previously, no expenditure was incurred on works of repair in and around 2004.

52. The claimant seeks, in the further alternative, payment of her statutory legacy and her capitalised life interest and statutory interest. The 2nd to 5th defendants say her claim is statute barred by virtue of section 22 of the Limitation Act 1980:

> "Subject to section 21 (1) and (2) of this Act –
>
> (1) no action in respect of any claim to the personal estate of a deceased person or to any share or interest in any such estate (whether under a will or on intestacy) shall be brought after the expiration of twelve years from the date on which the right to receive the share or interest accrued; and
>
> (2) no action to recover arrears of interest in respect of any legacy, damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due."

53. The claimant correctly takes the point that section 22 is expressly subject to section 21 (1). The claimant's reply does not explain, however, what the effect of section 21(1) is said to be. A Part 18 request was served asking the claimant to provide such an explanation. It is fair to describe the answer to the Part 18 request as being Delphic. In effect, it merely repeats that section 22 subject to section 21(1) without saying what effect that would have.

54. At the hearing, Mr Dubbery relied upon an observation made by Chadwick LJ in *Green v Gaul* [2006] EWCA Civ 1124 at [28]:

> "As I have said, the better view is that the period under section 22(a) of the 1980 Act (in cases to which that section applies) will not run until the administrator has paid the costs, funeral and testamentary expenses, debts and other liabilities properly payable out of the assets in his hands, and provided for the payment of any pecuniary legacies. It is not until then that he is in a position to distribute the residuary estate to those entitled under section 46 of the Administration of Estates Act 1925; because it is not until then that "the residuary estate of the intestate" can be identified – section 33(4) of that Act. That is not, of course, to say that a beneficiary has no remedy against an administrator who delays in getting in the assets and paying the administration expenses and debts: it is only to say that, in such a case, time does not run against the beneficiary under section 22(a) of the Limitation Act 1980."

55. I turn to deal with the 2nd to 5th defendants' application as it relates to the 6th defendant's claim. Mr Wilson QC submits, as a starting point, that the 6th defendant is not able to support his mother's case and put forward a contradictory case 'if her claim fails'. He must make a choice and, having signed a statement of truth stating that the facts in the claimant's case are admitted, and he does not dispute her entitlement to the whole

beneficial interest, he has made his election and, to put it colloquially, he is stuck with it.

56. If that approach is not accepted, the 2nd to 5th defendants say that the 6th defendant's case is unsustainable as it is set out in his counterclaim and Part 20 claim and supported by his witness statement. The following points are made:

(1) He puts his case in very general terms. He says in 1992 all the parties had an interest in the property and their common intention changed "over the years". He says, in effect, the 1st to 5th defendants' interests in the property were abandoned by (i) ignoring it, (ii) not attempting to invest in it, (iii) not maintaining or repairing it and (iv) not seeking for the property to be sold or let.

(2) However, the 6th defendant is unable to say that the estate has been administered. He accepts it has not. The duties to maintain the property rested with his mother and the 1st defendant. He does not rely on an assent. On the facts he relies on, his starting point is wrong in law. Neither he nor the other parties as beneficiaries under an intestacy has a beneficial interest. They have, or had, a chose in action. Therefore, there were no interests upon which an amended common intention could bite even assuming the court were to be willing to extend the principles derived from *Jones v Kernott* to a family inheriting interests in an estate under an intestacy.

(3) On his evidence, all the siblings had an interest in 2004 and it was for but a short period that the possibility of a deal being done was canvassed. He suffered no detriment during that period. In any event, it is essential for him to plead (and ultimately to establish) that the 4th defendant had authority to act for other siblings – see *Fielden v Christie-Miller* [2015] EWHC 87 (Ch) per Sir William Blackburne at [26].

(4) The proprietary estoppel claim is based upon the 6th defendant's admission of the claimant's case. But the two cases are not consistent. Her case is limited to events post 1994 whereas his own case is not so limited. In any event, it is said that the circumstances are not sufficient to found an estoppel either as acquiescence or detrimental reliance, taking his case at its highest.

(5) No basis for the taking of an account of the 6th defendant's expenditure on the property is pleaded.

57. Ms Eagling who appeared for the 6th defendant submitted that he was entitled to plead his claim as he did because he did not wish to take a position against his mother. She further submitted that the law since *Stack v Dowden Jones v Kernott* and, most recently in *Marr v Collie* [2018] UKPC 17, is sufficiently flexible to enable the court to apply the principles of a common intention constructive trust arising from a couple sharing a domestic arrangement to a wider family context.

58. Ms Eagling makes the following additional points:

(1) She accepts the beneficiaries of an unadministered estate have only a chose in action, namely a right to the due administration of the estate. They do not have a beneficial interest in the property comprised in the estate.

(2) The ordinary rule is that estate administration is prima facie complete when all debts and expenses have been discharged and the residue ascertained. At that point the personal representatives become trustees of the assets in their hands.

(3) The point at which an administrator ceases to be such and becomes a trustee may not be easy to determine.

(4) There is no reason why the existence of a constructive trust should depend upon the technical distinction between administered and unadministered estates, a distinction which is difficult to draw and she submits that the application of such a rule would create confusion and uncertainty.

(5) A common intention constructive trust can be inferred from inaction. Here she relies upon the facts in *Jones v Kernott* where the court concluded that Mr Kernott had demonstrated no intention of availing himself of beneficial ownership and the logical inference in that case was that his beneficial interest had crystallised when Mr Kernott bought his own property.

59. In her skeleton argument, Ms Eagling relies on seven factors that evidence abandonment by his siblings. The two factors that are pleaded are they did not (i) ask the claimant and the 6th defendant to leave the property so it could be sold or let, or (ii) offer to contribute towards the maintenance of the property or do work themselves. Other, unpleaded, factors include a failure to ask for an occupation rent, to ask to inspect the property, to ask about its value or to ask if it was insured.

Conclusions concerning the claimant's claim

60. The claimant's position is a stark one. If the 2nd to 5th defendants are right, not only does the claimant have no interest in the property but, also, she has lost her entitlement to her statutory legacy and capitalised life interest. She will have lost her home and will obtain no benefit from Mr Bhusate's estate aside from having lived at the property for many years. The 2nd to 5th defendants have done nothing to require due administration of their father's estate over the same period and will obtain a windfall.

61. However, the starting point concerning Mr Bhusate's estate is not in doubt. The claimant and the first defendant were under a duty to administer the estate and it was their responsibility to keep the property in repair.

62. The 2nd to 5th defendants plead in their counterclaim against the claimant that she was under a duty to administer the estate and she has failed to comply with that duty for over 20 years. If the pleading requirements of CPR 16.5(3) and (5) are applied to paragraphs 13 and 14 of the claimant's reply, the claimant is treated as having admitted her failure to administer the estate. In any event, the claimant has no real answer to the point. Even if she is right that the sale of the property was halted at the request of the 2nd to 5th defendants in about 1994, this could not, of itself, entitle the claimant (and the 1st defendant) to ignore their obligations from then onwards. The estate remains unadministered.

63. It is not open to the claimant, based on the facts she relies on, to assert that the beneficiaries obtained choate interests in the property by 1994 or any other date. There has not been an appropriation or an assent. The claimant's case shows that the proposals

which might have led to appropriation or assent stalled in the mid-1990's and were not taken forward. And even if there had been an appropriation or an assent, the rule against self-dealing would defeat an attempt to vest the property in the claimant. In this regard, the facts are similar to those in *Kane v Radley-Kane* because the claimant would have taken for herself the property at a time market prices were very low whereas the value of the property would have increased rapidly from the mid-1990's onward. There are no circumstances present in this case that might lead to the rule being disapplied. The claimant's Case 1 is unsustainable both on the facts she has pleaded and in law. It must be struck out or, in the alternative judgment will be entered against the claimant on the ground that she has no real prospect of success and there is no compelling reason why this issue should be tried.

64. Case 2 and Case 3 also suffer from two initial legal defects. First, Mr Wilson QC is right that (i) there is no basis upon which the court may conclude that a resulting trust arose for the reasons put forward on behalf of the applicants and (ii) common intention constructive trusts may only be inferred from the facts that are relied upon. They are not imputed.

65. That leaves Case 2 and Case 3 based upon a common intention constructive trust to be inferred from the matters pleaded in paragraph 18 of the claimant's case. There is again an initial defect; one which may be characterised as procedural. For Case 2 and Case 3, the claimant relies on the same facts as forming the basis from which different inferences may be drawn about the intentions of the parties. It is difficult to see, however, how those facts can support both a trust under which the claimant is the sole beneficial owner and a trust under which she holds a beneficial interest with the 1st to 5th defendants, let alone one in which the interests of some parties were frozen leaving the claimant and the 6th defendant to benefit from substantial increases in value. The facts relied upon to support these cases do not sit together. It is impossible for the claimant to say, on the one hand, she subscribed to a common intention that she held the sole beneficial interest but on the other hand to say the common intention was entirely different. She has to put forward one case or the other. As they are put forward, the two cases are amenable to an order striking them out for the reasons explained by Patten J in *Clarke v Marlborough Fine Art*. I can see no reason why such an order should not be made.

66. Further analysis of Cases 2 and 3 is strictly unnecessary. However, I will put forward reasons briefly. In my judgment, *Jones v Kernott* (even taken in light of the decision in *Marr v Collie*) does not assist the claimant. In a domestic property sharing context, there may be little difficulty finding that the parties intended the beneficial interests to be shared and the court will then impute an intention about the shares in which the beneficial interests are held. There is, however, no basis for applying the approach in *Jones v Kernott*, to a wider context where (i) there is an intestacy and (ii) no common intention about beneficial interests may be inferred from facts that predate the deceased's death. The claimant does not rely on any matters or events that occurred before Mr Bhusate died. It is common ground that sections 46 and 47A AEA 1925 applied on his death and the property which formed part of his estate was subject to the intestacy regime. In *Jones v Kernott* the property was registered in joint names. The court's task was to find how the beneficial interests were held. In this case there is an equally clear, but entirely different starting point that is provided by Mr Bhusate's intestacy. There is no reason, in principle, why a person in the claimant's position could

not show that the estate or an asset within it was held on the basis of a common intention constructive trust on conventional principles that relied upon an agreement (whether oral or written). That is not, however, how the claimant's case is put forward and, in any event, there are no facts upon which such an agreement could be found.

67. It seems to me that the approach relied upon by the claimant is neither justified on the current state of the law, nor on the facts she relies upon. Neither can it be said that there is a developing area of jurisprudence that might apply the *Jones v Kernott* approach to circumstances that do not amount to a domestic relationship because of the statutory provisions that apply on an intestacy.

68. There are insuperable difficulties with Case 2 and Case 3 that include:

(1) As to cases 2 and 3, she is not entitled to put forward inconsistent claims which rely on different common intentions.

(2) Cases 2 and 3 relying on a resulting trust are bound to fail.

(3) Based on the analysis I have summarised earlier in this judgment, Cases 2 and 3 are unsustainable on the facts she has put forward; and there is no reason to believe further evidence will improve her prospects of success.

(4) I accept the analysis put forward by the applicants of the difficulties in the claimant's case pleaded at paragraph 18 of the claim.

69. Case 2 and Case 3 will be struck out. In the alternative, if not struck out, judgment will be granted in favour of the 2nd to 5th defendants on the basis that the claimant has no real prospect of success and there is no compelling reason why the claim should be tried.

70. I can see no answer to the applicants' case that the claimant's entitlement to her statutory legacy and capitalised life interest (plus interest) is statute barred. Section 21(1) does not assist the claimant. She is not a beneficiary under a trust because the estate has not been administered. And the passage in the judgment of Chadwick LJ in *Green v Gaul* does not assist her. It refers to ascertainment of the residuary estate. However, the claimant is not a residuary legatee. Her claim arises under section 47 AEA 1925 and is an entitlement to a statutory legacy and a capitalised life interest. It is not a claim to the residue. The claimant's claim arising from section 46 AEA 1925 is statute barred and will be struck out.

Conclusions on the 6th defendant's case.

71. I am in no doubt that the 6th defendant falls at the first hurdle. He is not entitled to support his mother's claim and to agree the facts she relies upon (including the various common intentions she asserts) and then put forward a case that contradicts hers. He cannot equivocate about his case. His claim to have a beneficial interest in the property will be struck out.

72. In any event, were it to be necessary to do so, I would strike out the 6th defendant's case based on a common intention resulting trust because it is unsustainable on the facts I have summarised earlier in this judgment, or enter judgment under CPR 24.2.

73. The 6th defendant's case that relies on proprietary estoppel is of no assistance to him. There are no clear representations; and if there were any pleaded, there is no proper case put forward about reliance. I will strike out this element of the claim, or alternatively, if necessary, enter judgment under CPR 24.2.

74. The facts that underpin the 6th defendant's case for an account based on payments by him can be assumed to be true for the purposes of the application. However, the basis for an account being taken is not specified. It is not clear how he could have an entitlement to an account as against the 1st to 5th defendants. They have never had a beneficial interest in the property. It is not suggested that he claims against the 1st defendant in her capacity as an administrator of the estate. The claim for an account will be struck out.

Section 50 Administration of Justice Act 1985

75. The 2nd to 5th defendants apply under section 50 of the Administration of Justice Act 1985 for the removal of the claimant and the 1st defendant as administrators.

76. The jurisdiction under section 50 of the Administration of Justice Act 1985 is well settled. The court has a discretion to replace administrators and in exercising the jurisdiction it will have regard to the welfare of the beneficiaries as a whole: see *Letterstedt v Broers* (1894) 9 App Cas 371 and *Thomas & Agnes Carvel Foundation* [2008] Ch 395. A convenient summary of the considerations to which the court will have regard can be found in *Harris v Earwicker* [2015] EWHC 1915 (Ch) at [9].

77. Four main submissions are made in support of the application to remove the claimant and the 1st defendant:

    (1) They have not provided an account to the beneficiaries.

    (2) They have failed to progress the administration.

    (3) The claimant and the 1st defendant are not competent to act together as co-administrators.

    (4) The claim shows the claimant has a conflict of interest in relation to the other beneficiaries.

78. The applicants propose that Mr Gregory White of Dixon Ward solicitors is appointed as the sole administrator and he has consented to be appointed. Evidence of his suitability has been provided.

79. It is not essential for the court to make findings that are adverse to the claimant and the first defendant to enable the court to remove them. However, in this case it is plain there has been a singular failure on their part to fulfil their duties. It matters not that their failure to act properly may have been due to ignorance or poor advice. They have demonstrated an inability to act in accordance with their duties over many years. Furthermore, in light of the orders that will be made on the application to strike out the claim, or for summary judgment, it seems to me that it would be impossible for the claimant to remain in office and it is not desirable for the 1st defendant to continue in a role that she has failed to perform adequately, or at all. It is undesirable that this relatively small estate should be burdened with the fees of a professional administrator. However, in reality professional

advice would be needed in any event if the claimant and 1st defendant were to remain in office and so the legal additional costs will not be substantial.

Mrs Bhusate's estate

80. The setting aside of Mr Bhusate's assent in favour of himself is based upon the rule against self-dealing. When Mrs Bhusate died, Mr Bhusate was appointed her sole personal representative and, initially, he assented the property, which was in Mrs Bhusate's sole name, to himself in his capacity as her representative. He later assented it to himself beneficially. The submission runs that by his actions he put her sole beneficial ownership beyond challenge.

81. The claimant had no knowledge of the assent. She pleads laches, delay and acquiescence, although no particulars are provided. Mr Wilson QC submits that delay is irrelevant because the 2nd to 5th defendants were not involved in the administration of the estate. There is nothing in the claimant's case which pleads acquiescence (a necessary element of laches); the 2nd to 5th defendants had no knowledge upon which acquiescence could be established. And section 21(1)(b) of the Limitation Act 1980 does not apply because the property remained in the hands of Mr Bhusate's estate.

82. The rule against self-dealing is not an absolute one as the decision in *Holder v Holder* shows. On any view there are very exceptional factors in play that would make the setting aside of Mr Bhusate's assent to himself a deeply unattractive and unjust outcome. These factors include:

    (1) The period that has elapsed since the assent.

    (2) The acceptance by the defendants of the status quo since they achieved adulthood.

83. This part of the application by the 2nd to 5th defendant will be dismissed.

Conclusion

84. The effect of the conclusions I have reached will be that the claimant's case and the 6th defendant's counterclaim will be struck out, or dismissed, in entirety other than the claimant's claim under the Inheritance Act. On the handing down of this judgment, or on a date convenient to the parties, I will hear submissions concerning the claimant's application under section 4 of the Inheritance Act to extend time for bringing her claim.