

**Neutral Citation no. [2008] NICH 5**

Ref: **STE7097**

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: **10/03/08**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
CHANCERY DIVISION**

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**BETWEEN:**

**PATRICK McDERMOTT  
AND ANNE-MARIE McDERMOTT**

**Plaintiffs:**

**-and-**

**EDWARD McDERMOTT AND  
MORTGAGE TRUST LIMITED**

**Defendants:**

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**STEPHENS J**

**Introduction**

[1] Patrick and Anne-Marie McDermott have brought this action (“the action”) against Edward McDermott claiming a declaration that the property at 74 Ballymoney Road, Banbridge, County Down (“the property”) is held on trust by Edward McDermott for the absolute benefit of Patrick and Anne-Marie McDermott or alternatively in such shares as the court shall determine. They also seek consequential orders including an order that Edward McDermott executes a transfer of the property into the joint names of Patrick and Anne-Marie McDermott.

[2] Patrick McDermott is the son of Edward McDermott. Edward McDermott runs a pre cast concrete manufacturing business. The title to the property is registered and Edward McDermott is the registered owner. Edward McDermott has created a charge on the property in favour of Mortgage Trust Limited. The action was originally commenced against

Edward McDermott alone. At a review hearing Mortgage Trust Limited had expressed the view that there was no need to be joined in the proceedings as a second defendant as their interests were identical to the interests of Edward McDermott. However on the morning of trial an application was made by Edward McDermott's solicitors to come off record. I granted that application. Edward McDermott was not present in court. Patrick and Anne-Marie McDermott were aware of the difficult family situation in which they were placed. The interests of both of Patrick McDermott's parents and his four brothers would be affected by the outcome of the case if it was decided in favour of the plaintiffs. Patrick and Anne-Marie McDermott applied to adjourn the trial to enable discussions to take place amongst the wider family circle and also to ensure that there was no implication that they were taking unfair advantage of any lack of representation in a situation where their family members could be affected. I adjourned the case to facilitate negotiations and also to enable Mortgage Trust Limited to reconsider whether they should apply to be joined in the proceedings. Mortgage Trust Limited subsequently decided to apply to be and was joined as a second defendant in the action. In the meantime there was a genuine attempt by Patrick and Anne-Marie McDermott to initiate negotiations but unfortunately Edward McDermott was not willing to participate. The case proceeded to trial. I will continue to refer to the parties in this judgment by their names rather than by the capacities in which they sue and are sued.

[3] Mr McEwen appeared on behalf of Patrick and Anne-Marie McDermott. There was no appearance on behalf of Edward McDermott. Ms McBride appeared on behalf of Mortgage Trust Limited. I am indebted to both counsel for their succinct and clear submissions.

### **The facts**

[4] Patrick and Anne-Marie McDermott gave evidence. I accept their evidence. They appeared to me to be both reliable and truthful witnesses. No evidence was called by Mortgage Trust Limited. I now set out my findings of fact.

[5] Patrick McDermott emigrated from Northern Ireland to the United States of America on 14 February 1998. He met Anne-Marie, a Canadian, and they married in December 1998. They now have six children. Patrick McDermott secured a Green Card in 1999 and was employed by Budweiser as a sales representative. Anne-Marie McDermott was employed as an elementary school teacher. In 1999 Patrick and Anne-Marie McDermott decided to move from the United States of America to Northern Ireland to be close to Patrick McDermott's parents. They also wished to establish Northern Ireland as the place where their children would be brought up. They left their respective jobs in the United States of America and they were intent on making a permanent move to Northern Ireland. Anne-Marie McDermott was

then expecting the birth of their first child. When they arrived in Northern Ireland they attempted to purchase a house. They paid a deposit on a house in a new local housing development but could not obtain a mortgage. That purchase fell through although they were able to recover the deposit. In view of the fact that they could not purchase a house they decided, although this was a disappointment to them, that they would make their permanent home in the United States of America where they both could obtain employment and where they could make lives for themselves and their family.

[6] At this time, for very understandable family reasons, Edward McDermott was extremely keen that Patrick and Anne-Marie McDermott made their home in Northern Ireland. He was disappointed that his son and daughter in law could not obtain a mortgage in order to enable them to purchase a house in Northern Ireland. Discussions occurred at that stage between them all as to whether Patrick and Anne-Marie McDermott could build a house on the property, planning permission having been obtained in 1996. In effect the property was then a site on the family farm and close to the home of Patrick McDermott's parents. However at that stage Patrick and Anne-Marie McDermott could not obtain a mortgage to fund any building works. Patrick and Anne-Marie McDermott returned to the United States of America. They were disappointed that the move to Northern Ireland had not been a success.

[7] Edward McDermott had not given up hope of persuading his son and daughter in law to return to Northern Ireland. He wished to persuade them to live in Northern Ireland on a permanent basis despite the failure of their attempted move in 1999. Patrick and Anne-Marie McDermott for their part were extremely concerned that they did not wish to be in the same position as they found themselves in 1999 where they had attempted to move to Northern Ireland without definite arrangements being in place for a home for their family. Edward McDermott would ring them in America on at least a monthly basis. He sent them proposed plans of a house to be built on the property. Edward McDermott during his various telephone calls to them assured them that he would take steps to obtain a loan for them secured by way of a mortgage on the property so that they could afford to build a house on the property. He commenced building a house on the property and maintained the pressure on Patrick and Anne-Marie McDermott to persuade them to move to Northern Ireland, to finish its construction and to live there.

[8] There were a series of telephone conversations between Edward McDermott and Patrick and Anne-Marie McDermott during which Edward McDermott represented to Patrick and Anne-Marie McDermott that if they came to Northern Ireland to live in the property and completed the house incurring all the costs in relation to its completion that the property would then belong to both of them. That in addition he had arrangements in place for finance to be available to Patrick and Anne-Marie McDermott so that they

could afford to complete the house. The loan and mortgage would be their responsibility and accordingly their ownership of the property would be subject to a mortgage which would cover the costs of completion. In return Patrick and Anne-Marie McDermott would make a payment to Edward McDermott of £30,000 to cover the costs of partially constructing the house; though Edward McDermott did not want this payment immediately. Edward McDermott's major objective was to persuade Patrick and Anne-Marie McDermott to come to Northern Ireland to finish the house and to make their lives in Northern Ireland.

[9] At this stage Patrick and Anne-Marie McDermott had established lives with secure and good jobs in the United States of America. Accordingly it was a hard decision for them as to whether they should come to Northern Ireland. However they decided to do so and came to Northern Ireland in late November or early December 2002 with their then three children. They lived in Edward McDermott's home on the family farm next door to the property. Unfortunately when they returned to Northern Ireland they found that a loan had not been organised by Edward McDermott. This placed them in considerable financial difficulties. There then followed a period of some considerable financial and personal difficulties for Patrick and Anne-Marie McDermott as they attempted to obtain employment, use savings and raise money to complete the construction of the house on the property. At that stage the house had been partially built by Edward McDermott. The roof was on but it required substantial works to be done to complete the interior. Those works were for the most part carried out by Patrick and Anne-Marie McDermott between December 2002 and June 2003. In June 2003 sufficient works had been undertaken to the house to enable Patrick and Anne-Marie McDermott and their children to move into the house but works continued thereafter for a number of years. All the works after December 2002 were paid for by Patrick and Anne-Marie McDermott or involved physical work being done by the Patrick McDermott. Edward McDermott made no further payments and did not undertake any further physical work on the house. Patrick and Anne-Marie McDermott expended in total a sum of approximately £60,000 and in addition Patrick McDermott undertook a considerable volume of physical work on the house.

[10] Edward McDermott did not, as he had promised, convey the house into the name of Patrick and Anne-Marie McDermott. When challenged in relation to this by Patrick and Anne-Marie McDermott he did not deny the promise but rather stated that if he conveyed the property to them they could sell the property and return to the United States of America.

[11] At some date Edward McDermott's solicitors sent a letter to Patrick and Anne-Marie McDermott asking them for £65,000 which it was contended represented the cost of the construction works carried out by Edward McDermott and the value of the site. There was confusion as to the date of

this letter which was not produced in evidence. It was originally thought to have been written in about August 2003 but I consider that its date was somewhat later than that. Patrick McDermott was taken aback by the receipt of a solicitor's letter on behalf of his father. He recognised that he always had an obligation to make a payment to his father for the work that had been carried out in partially constructing the house but the payment which had been discussed was a payment of £30,000 and it was to cover the approximate construction costs to December 2002. It was to be made at some unspecified date in the future. Patrick and Anne-Marie McDermott reflected on their obligations in that the payment of £30,000 did not include any element in respect of site value and they discussed the matter with their solicitor. They wished to obtain certainty and decided to make an offer of £60,000 to Edward McDermott. Edward McDermott was insistent on receiving £65,000. Thereafter no further conversations took place between Patrick and Anne-Marie McDermott and Edward McDermott in relation to this matter and the legal title of the property remained with Edward McDermott.

[12] Edward McDermott was suffering a degree of financial difficulties and owed money to the Inland Revenue. On 10 March 2004 without consulting either Patrick or Anne-Marie McDermott and without their knowledge he executed a mortgage over the property in favour of Mortgage Trust Limited to secure a loan to him of £89,031.00. Prior to this mortgage having been entered into two people came to the house with Edward McDermott. The only other person in the house at the time of this visit was Anne-Marie McDermott. Edward McDermott did not introduce the two people to Anne-Marie McDermott and she tried to enquire who they were and what they were doing. Edward McDermott declined to give an explanation and he told her not to tell Patrick McDermott. She did not do so. In retrospect the individuals who came to the house must have been surveyors on behalf of Mortgage Trust Limited but I am satisfied that neither Patrick nor Anne-Marie McDermott were aware that a mortgage was being entered into at that time. Mortgage Trust Limited made no enquiries of either Patrick or Anne-Marie McDermott who were then in occupation of the property. Subsequently in approximately August 2005 Edward McDermott without any explanation or warning and without telling his wife where he was going, left his house and business for a period of approximately one month. During this period of time he was out of contact with his wife and Patrick and Anne-Marie McDermott. Letters from Mortgage Trust Limited to Edward McDermott were delivered to Edward McDermott's house and opened by his wife. It was therefore at this stage and through Patrick McDermott's mother that Patrick and Anne-Marie McDermott became aware that Edward McDermott had mortgaged the property.

[13] At the time that Patrick and Anne-Marie McDermott came back to Northern Ireland they were unaware that the planning permission in relation

to the property contained an agricultural restriction clause. That clause was in the following terms:-

“The occupation of the dwelling shall be limited to a person mainly engaged, or last engaged, in the locality in agriculture as defined in Article 2(2) of the Planning (Northern Ireland) Order 1991, or in forestry, or a dependant of such a person residing with him or her or a widow or widow of such a person.”

Patrick and Anne-Marie McDermott would not have come to Northern Ireland if they had been aware of that restriction. The effect of the restriction is to decrease the value of the property which Edward McDermott had promised would belong to both Patrick and Anne-Marie McDermott if they completed the construction of the dwelling and came to live in it.

### **The proceedings**

[14] By an originating summons dated 15 September 2005 Mortgage Trust Limited commenced proceedings against Edward McDermott on foot of the mortgage dated 10 March 2004 (“the mortgage proceedings”). In the mortgage proceedings Mortgage Trust Limited sought possession of the property and an order that Edward McDermott pay the total amount outstanding under the mortgage. Patrick McDermott and Anne Marie McDermott applied to and were joined in the mortgage proceedings. On 21 November 2006 in the mortgage proceedings Master Ellison ordered Edward McDermott to pay £103,461.40. The remainder of the issues in the mortgage proceedings were adjourned to stand before the Chancery Judge.

[15] The action was commenced by a Writ of Summons issued on 24 October 2006. At the hearing of the action it was agreed between Mortgage Trust Limited, Patrick McDermott and Anne Marie McDermott that the action should be heard and determined before the hearing of the adjourned remaining issues in the mortgage proceedings.

### **Proprietary estoppel**

[16] The Court of Appeal in *Gillett v. Holt and Another* [2000] 2 All ER 289 considered the question of proprietary estoppel. In that case Mr Gillett worked for Mr Holt for nearly 40 years, had lived in his property and provided him with a surrogate family. Assurances had been repeatedly given that Mr Gillett would inherit the farm. However the relationship between the two men cooled and eventually Mr Gillett was summarily dismissed and Mr Holt made a further Will which excluded Mr Gillett entirely. Mr Gillett claimed an equity in Mr Holt’s property under the doctrine of proprietary estoppel arising from

reliance on the latter's assurances. Mr Gillett claimed that the requisite element of detriment was present as he had failed to seek or accept offers of employment elsewhere or to go into business on his own account, that he carried out of tasks beyond the normal scope of an employee's duty and he had failed to take substantial steps to secure his future wealth. The Court of Appeal considered a number of legal principles in relation to proprietary estoppel. For instance whether the doctrine of proprietary estoppel can be subdivided into three or four water tight compartments, whether proprietary estoppel could arise from an equivocal representation, the degree of reliance and detriment and whether there is a distinct need for a mutual understanding. The court concluded that:-

"The fundamental principle that equity is concerned to prevent unconscionable conduct permeates all elements of the doctrine. In the end the court must look at the matter in the round".

Accordingly:-

"... it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that the quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a 'mutual understanding' may depend on how the other elements are formulated and understood."

[17] An equivocal promise is one relevant factor when considering whether or not it would be unconscionable to permit the promisor from relying on his strict legal title having regard to any detriment suffered by the promisee. The Court of Appeal quoted with approval the following statement of principle in relation to proprietary estoppel:-

"The plaintiff relies on proprietary estoppel; the principle of which in its broadest form may be stated as follows: where one person (A) has acted to his detriment on the faith of a belief which was known to and encouraged by another person (B) that he either has or is going to be given a right in or over B's property B cannot insist on his strict legal rights if to do so would be inconsistent with A's belief."

[18] The following principles as to reliance and detriment were also quoted with approval:-

“(1) There must be a sufficient link between the promises relied upon and the conduct which constitutes the detriment—see *Eves v. Eves* ([1975] 3 All ER 768 at 774, [1975] 1 WLR 1338 at 1345), in particular *per* Brightman J. *Grant v. Edwards* ([1986] 2 All ER 426 at 432–433, 438–439, 439, [1986] Ch 638 at 648–649, 655–657, 656), *per* Nourse L.J. and *per* Browne-Wilkinson V.-C. and in particular the passage where he equates the principles applicable in cases of constructive trust to those of proprietary estoppel.

(2) The promises relied upon do not have to be the sole inducement for the conduct: it is sufficient if they are an inducement—(*Amalgamated Investment and Property Co Ltd (in liq) v Texas Commerce International Bank Ltd* [1981] 1 All ER 923 at 936, [1982] QB 84 at 104–105).

(3) Once it has been established that promises were made, and that there has been conduct by the plaintiff of such a nature that inducement may be inferred then the burden of proof shifts to the defendants to establish that he did not rely on the promises—*Greasley v. Cooke* ([1980] 3 All ER 710, [1980] 1 WLR 1306); *Grant v. Edwards* ([1986] 2 All ER 426 at 439, [1986] Ch 638 at 657).”

[19] Lord Justice Robert Walker also stated:-

“The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances.

There are some helpful observations about the requirement for detriment in the judgment of Slade LJ in *Jones v Watkins* [1987] CA Transcript 1200. There must be sufficient causal link between the assurance

relied on and the detriment asserted. The issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it. Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded—that is, again, the essential test of unconscionability. The detriment alleged must be pleaded and proved.”

[20] The appropriate form of relief was also considered as follows:-

“The aim is (as Sir Arthur Hobhouse said in *Plimmer v Mayor of Wellington* (1884) 9 App Cas 699 at 714) to 'look at the circumstances in each case to decide in what way the equity can be satisfied'. The court approaches this task in a cautious way, in order to achieve what Scarman LJ (in *Crabb v Arun DC* [1975] 3 All ER 865 at 880, [1976] Ch 179 at 198) called 'the minimum equity to do justice to the plaintiff'. The wide range of possible relief appears from *Snell's Equity* (30th edn, 1999) pp 641–643.”

[21] In addressing in what way the equity can be satisfied the expectation, the detriment, the position of Patrick and Anne-Marie McDermott and the amount available are all relevant factors. In *Jennings v. Rice* (2002) EWCA Civ 159 at paragraph [36] Lord Justice Aldous stated:-

“Both the result and the reasoning of the judgment in *Campbell* are inconsistent with Mr Warner's submission. There is a clear line of authority from at least *Crabb* to the present day which establishes that once the elements of proprietary estoppel are established equity arises. The value of that equity will depend upon all the circumstances including the expectation and the detriment. The task of the court is to do justice. The most essential requirement is that there must be proportionality between the expectation and the detriment.”

[22] Accordingly a court is required to satisfy the equity rather than being required to satisfy the expectation. In *Jennings v. Rice* Lord Justice Robert Walker stated at paragraph [49]:-

“It is no coincidence that these statements of principle refer to satisfying the equity (rather than satisfying, or

vindicating, the claimant's expectations). The equity arises not from the claimant's expectations alone, but from the combination of expectations, detrimental reliance, and the unconscionableness of allowing the benefactor (or the deceased benefactor's estate) to go back on the assurances. There is a faint parallel with the old equitable doctrine of part performance, of which Lord Selborne said in *Maddison v Alderson* (1883) 8 App Cas 467, 47 JP 821 p 475 of the former report,

“In a suit founded on such part performance, the defendant is really 'charged' upon the equities resulting from the acts done in execution of the contract, and not (within the meaning of the statute) upon the contract itself.”

So with proprietary estoppel the defendant is charged with satisfying the equity which has arisen from the whole sequence of events. But the parallel is only faint since in the case of estoppel there is no contract and the nexus between the benefactor's assurances and the resulting equity is less direct; the assurances are only half the story. In *Dillwyn v Llewelyn* [1861-73] All ER Rep 384, (1862) 4 De G F & J 517, at p 522 of the latter report Lord Westbury expressed the point in terms which anticipated Lord Selborne:

“The equity of the donee and the estate to be claimed by virtue of it depend on the transaction, that is, on the acts done, and not on the language of the memorandum [which amounted to an imperfect gift].”

[23] At paragraph [52] Lord Justice Robert Walker considered what factors are appropriate to be taken into account when deciding upon the appropriate remedy which will satisfy the equity. In short there is neither a comprehensive list nor any specific hierarchy of factors. There may be a need for a clean break. One can take into account other legal and moral claims on the promisor. For instance in this case the court can take into account the legal and moral claims of Mortgage Trust Limited upon the property. In addition one can take into account particularly oppressive conduct on the part of the promisor. Lord Justice Robert Walker stated:-

“It would be unwise to attempt any comprehensive enumeration of the factors relevant to the exercise of the court's discretion, or to suggest any hierarchy of factors. In my view they include, but are not limited to, the factors mentioned in Dr Gardner's third hypothesis (misconduct of the claimant as in *J Willis & Sons v Willis* 277 EG 1133, [1986] 1 EGLR 62 or particularly oppressive conduct on the part of the defendant, as in *Crabb v Arun District Council* or *Pascoe v Turner*). To these can safely be added the court's recognition that it cannot compel people who have fallen out to live peaceably together, so that there may be a need for a clean break; alterations in the benefactor's assets and circumstances, especially where the benefactor's assurances have been given, and the claimant's detriment has been suffered, over a long period of years; the likely effect of taxation; and (to a limited degree) the other claims (legal or moral) on the benefactor or his or her estate. No doubt there are many other factors which it may be right for the court to take into account in particular factual situations.”

## **Decision**

[24] I have found as a fact that Edward McDermott made a promise to Patrick and Anne-Marie McDermott that the property would be transferred to them if they came to live in Northern Ireland in the property and completed its construction. Patrick and Anne-Marie McDermott acted to their detriment in reliance on that promise. They gave up their existing established family life and jobs in America. They gave up opportunities of developing their lives further in America and instead they moved as a family to live and work in Northern Ireland. They expended £60,000 on finishing the house and did so in circumstances which put them under considerable financial pressure. Patrick McDermott has also undertaken a not inconsiderable amount of physical work on the property. In those circumstances I consider that it is unconscionable for Edward McDermott to be able to rely on his strict legal rights. Accordingly I find that Patrick and Anne-Marie McDermott have an equity in the property arising from their reliance on Edward McDermott's promises to them. I turn to consider in what way the equity can be satisfied.

[25] The expectation of Patrick and Anne-Marie McDermott was that they would own the property upon completion of the construction of the house subject to a payment being made to Edward McDermott of £30,000 at some future date to cover the cost of the partial construction works that he had undertaken but which did not cover the value of the site. Patrick and Anne-

Marie McDermott did not give specific consideration to the benefit that they would obtain from any increase in the value of the property but it follows from the concept of ownership that it would have been the joint expectation of Patrick and Anne-Marie McDermott that they would benefit from any increase in the capital value of the property and that their position on the housing ladder would be secure. Another important aspect of their expectation is that they would have a home of their own providing a secure and stable environment for them and their family. Patrick and Anne-Marie McDermott have a strong family orientation and this factor, ordinarily significant, has in this case a particular emphasis.

[26] An inference from Edward McDermott's promise that the property would be Patrick and Anne-Marie McDermott's is that he would not be entitled to anything other than a payment of £30,000. That is that he would not gain from any subsequent increase in the value of the property and that he was foregoing any share in that increase. That was the expectation that Edward McDermott gave to Patrick and Anne-Marie McDermott but I consider that it would be incorrect to term it a joint expectation. I consider that Edward McDermott wished to control his son and daughter in law for the purpose of compelling them to remain in Northern Ireland. He stated that he would not convey the property to Patrick and Anne-Marie McDermott because if he did they might sell and return to the United States of America. I consider that he never had any intention of conveying the property to Patrick and Anne-Marie McDermott but rather had devised a stratagem to secure their return to Northern Ireland and once there he could attempt to ensure that they remained through his continued ownership of the property. That subsequently when he was faced with his own financial difficulties he had no hesitation in using his legal ownership of the property to secure a loan in his favour. That he contrived to extract money out of the property in excess of the figure of £30,000 that had been agreed and the amount of £60,000 that had been offered and the amount of £65,000 that he had demanded. In effect he practised a deception upon his son and daughter in law and thereafter knowing of the promises that he had made to Patrick and Anne-Marie McDermott and their precarious family and financial position he secured a loan upon the property in circumstance where he had not revealed the claims of Patrick and Anne-Marie McDermott to Mortgage Trust Limited. He was less than frank as to the fact that he had not secured a loan for Patrick and Anne-Marie McDermott to enable them to complete the construction of the house. He was also less than frank as to the terms of the planning permission that he had obtained. In arriving at the appropriate remedy I take into account Edward McDermott's conduct both in relation to Patrick and Anne-Marie McDermott and in relation to Mortgage Trust Limited.

[27] Mortgage Trust Limited by virtue of the inspection carried out by its surveyors knew that at least Ann-Marie McDermott was in occupation of the property at the date of the loan and mortgage. They made no enquiries of

Patrick or Anne-Marie McDermott. In the ordinary course of events Mortgage Trust Limited would have had access to professional advice in relation to the mortgage. No evidence was called on behalf of Mortgage Trust Limited and I infer that it chose to ignore the risk that Patrick and Anne-Marie McDermott had an equity in the property. In addition I take into consideration the fact that it is entitled to a remedy against Edward McDermott in that it has obtained a money judgment against him for the outstanding amounts that are owed. I also take into account that Edward McDermott may have no financial resources to meet any judgment.

[28] In considering the remedy one of the factors that I take into account is the expectation of Patrick and Anne-Marie McDermott. I also take into account the detriment which has been caused to them. That is both financial detriment and also disruption to their employment and family lives. I consider that there has been a very substantial detriment to Patrick and Anne-Marie McDermott. Their family lives, their jobs and their financial arrangements have been totally disrupted. I recognise that the detriment to Patrick and Anne-Marie McDermott is in part a mirror image of their expectations and when assessing detriment to Patrick and Anne-Marie McDermott I have borne that in mind.

[29] I do not consider that the promise made by Edward McDermott was equivocal. It was clear. The property was identified. That property would belong to Patrick and Anne-Marie McDermott. There were certain aspects that would have to have been further addressed. For instance who was to pay stamp duty and who was to pay the costs of the conveyance. However this does not detract from the fact that the essence of the promise was clear. In addition the promise was considered fair and proportionate at the time that it was made. It was unlike a promise to leave property in a will in that wills by their nature can be altered or revoked.

[30] There was no valuation evidence at the trial in relation to the property. However the parties proceeded on the basis that its current market value was approximately £295,000 if there had been no agricultural restriction. That the effect of the agricultural restriction was to bring the value down to approximately £220,000. Property values have substantially increased in Northern Ireland over the period from June 2003 when the construction of the house was sufficiently completed to allow Patrick and Anne-Marie McDermott to move in and 2008. The contention made on behalf of Mortgage Trust Limited was that the ownership of the house should be apportioned as to Patrick and Anne-Marie McDermott two thirds and as to Edward McDermott one third. It was contended that this apportionment would satisfy the equity. That would mean that at present market value approximately £70,000 - £75,000 would be attributable to Edward McDermott. It was said that the figures of £70,000 - £75,000 were not far removed from the figure of £60,000 which Patrick and Anne-Marie McDermott had considered it fair to offer to Edward McDermott at an earlier stage. It was then envisaged by Mortgage Trust

Limited that it would continue with the mortgage proceedings for possession of the premises on the basis of a submission that the mortgage takes priority over the equity of Patrick and Anne-Marie McDermott in the property.

[31] If any part of the property is apportioned in favour of Edward McDermott then he would not only have obtained a loan of £89,031 on the security of the property but also he would be left with a share in the property. If one leaves out of account the interests of Mortgage Trust Limited then I consider that such an outcome would be inappropriate. It would be inequitable for Edward McDermott to profit in that way.

[32] Mortgage Trust Limited did not accept that if Patrick and Anne-Marie McDermott had an equity in the property then that equity would be an overriding interest and take priority over the mortgage under *Williams and Glyn's Bank v. Boland and another* [1981] AC 487. If the equity of Patrick and Ann-Marie McDermott in the property was satisfied by transferring the entire legal title to them then they would obtain a property free from any mortgage and without having paid either the £30,000 which they at all stages envisaged paying or the £60,000 which they offered to pay motivated by a desire to achieve certainty and in recognition that the sum of £30,000 did not include any amount in respect of the site value. Such an outcome would also be inappropriate.

[33] After hearing the case and before finalising this judgment I have been informed that Patrick and Anne-Marie McDermott and Mortgage Trust Limited have settled the mortgage proceedings on the basis that if in the event that I find that Patrick and Anne-Marie McDermott have an equity in the property and I am minded to order the transfer of the entire property to them that Mortgage Trust Limited will vacate the mortgage over and not seek possession of the property upon payment of £70,000. That in those circumstances there would be no order as to costs in relation to these proceedings and the mortgage proceedings.

[34] I consider that there is a need for a clean break in this case in view of the conduct of Edward McDermott and so that Patrick and Anne-Marie McDermott's expectation of a house to live in which would be theirs can be met. The need for a clean break is applicable both as between Patrick and Anne-Marie McDermott and Edward McDermott as well as between Patrick and Anne-Marie McDermott and Mortgage Trust Limited. I consider that the appropriate remedy is to order Edward McDermott to transfer the property to Patrick and Anne-Marie McDermott jointly subject to Patrick and Anne-Marie McDermott making a payment on behalf of, rather than to, Edward McDermott. That payment, which will be on behalf of Edward McDermott, is to be made to Mortgage Trust Limited. It will have the effect of reducing the liability of Edward McDermott to Mortgage Trust Limited. It is to be made on

condition that Mortgage Trust Limited discharges the mortgage over the property

[35] I turn to consider the amount of the payment. Patrick and Anne-Marie McDermott have at all times recognised that they agreed to pay £30,000. They increased that to £60,000 in view of the fact that the amount of £30,000 did not cover the value of the site and to obtain certainty. They did not know at that stage that the property was subject to a planning restriction and that this affected its value. I had the opportunity of seeing Patrick and Anne-Marie McDermott in the witness box. I consider that the value of their home is not their prime consideration. Rather they wished to secure a home and they wished to do what was appropriate within their extended family even if they had not achieved certainty at an earlier stage and the value of their home was less than they had anticipated. They did not wish to go back on the earlier figure of £60,000. I consider that the payment should be at least £60,000 and in view of the fact that Patrick and Anne-Marie McDermott have agreed to pay Mortgage Trust Limited £70,000 I consider that is the appropriate figure in this case. I make it clear that even if Patrick and Anne-Marie McDermott and Mortgage Trust Limited had not entered into the settlement of the mortgage proceedings I would not have ordered any greater figure than £70,000.

[36] Approaching the case in the round I order Edward McDermott to transfer the property into the joint names of Patrick and Anne-Marie McDermott. The property adjoins the family farm and accordingly the transfer of the property may well have to include appropriate easements. I also order Patrick and Anne-Marie McDermott to pay to Mortgage Trust Limited, on behalf of Edward McDermott, the sum of £70,000 on condition that Mortgage Trust Limited discharges the mortgage over the property. In *Gillett v Holt* directions were substituted by the court of appeal for the order made by the judge. The outworking of the orders that I have made may require the parties to return to the court and accordingly I give liberty to apply.

[37] I will hear counsel in relation to the question of costs as between Patrick and Anne-Marie McDermott and Edward McDermott. I make no order as to costs as between Patrick and Anne-Marie McDermott and Mortgage Trust Limited.