TC01791

Appeal number SC/3127/2008

INHERITANCE TAX – deemed transfer on death – deceased's estate included a farmhouse – whether the Appellant, who had been in occupation of the farmhouse at the date of the death and for some years prior thereto and had incurred expenditure on the farmhouse, had acquired an equitable interest in the farmhouse such as to reduce or eliminate the value attributable thereto which ought to be included in the deceased's estate – held, no – whether the farmhouse was agricultural property within section 115(2) Inheritance Tax Act 1984 – nature of the nexus required between a farmhouse and the agricultural land or pasture etc. in the definition – whether such nexus was occupation and ownership or only occupation – held, the nexus is only occupation – Special Commissioner's decision in Rosser v IRC [2003] STC (SCD) 311 not followed – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

JOSEPH NICHOLAS HANSON
as Trustee of the William Hanson 1957 Settlement **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS (*Inheritance Tax*) **Respondents**

TRIBUNAL: JOHN WALTERS QC
JOHN RITCHIE

Sitting in public in Norwich on 29 and 30 November 2011

Toby Harris, Toby Harris Tax Consultancy, for the Appellant
Jonathan Davy, Counsel, instructed by the Solicitor for HMRC, for the Respondents

DECISION

Introduction

1. This is an appeal against a Notice of Determination made under section 221 Inheritance Tax Act 1984 ("IHTA") and dated 3 October 2005. The Notice of Determination relates to 11 The Green, Great Horwood, Milton Keynes, Buckinghamshire (described therein as 'the Property' but referred to hereinafter as 'the House'). The Notice of Determination is, in terms:

> "**In relation to** – (a) the deemed disposal for the purposes of inheritance tax on the death on 9 December 2002 of Joseph Charles Hanson ("the Deceased")
>
> (b) the interest of the Deceased in 11 The Green, Great Horwood, Milton Keynes, Buckinghamshire ("the Property") under the trusts of a Settlement made on 2 April 1957 by William Hanson
>
> **That** – the Property was not agricultural property within the meaning of s.115(2) [IHTA]."

2. The appeal raises a question of construction of section 115(2) IHTA (the definition of 'agricultural property') which Mr. Davey, for the Respondent Commissioners ("HMRC"), told us was an 'important point'. The official view of the meaning of section 115(2) as it applies in relation to relief for agricultural property for inheritance tax ("IHT") purposes for cottages, farm buildings and (as in the present case) farmhouses on particular facts falls to be tested in this appeal. The question of construction is the nature of the nexus between a farm building and the agricultural land or pasture etc. mentioned in the definition. The official view is that the nexus is common ownership and common occupation. The Appellant submits that the nexus is common occupation only. The point has been known about for some time. It is referred to, but left open, in the decision of the Court of Appeal in *Starke and Another v IRC* [1995] 1 WLR 1439. It was decided, in HMRC's favour, by the Special Commissioner (Mr. Michael Tildesley) in *Rosser v IRC* [2003] STC (SCD) 311, but both parties are agreed (as is the case) that the Special Commissioner's decision is not binding on this Tribunal.

3. Although the Notice of Determination only raises the issue that the House was not agricultural property within the meaning of section 115(2), a logically prior point was raised by the Appellant in 2008 (over two years after the date of the Notice of Determination). This point was that by reason of the conduct of the Deceased, the Appellant, Joseph Nicholas Hanson – who is his son – and the Trustees of the William Hanson 1957 Settlement ("the Settlement"), the Deceased had no valuable beneficial interest in the House immediately before his death and therefore no value attributable to the House ought to be included in the value of his estate for the purposes of the IHT charge on death.

4. HMRC raised no objection to the Tribunal determining this issue on the appeal and it is obviously convenient that we should do so. However, Mr. Harris, for the Appellant, raised what appears to us (and appeared to Mr. Davey for HMRC) to

be a new point during the course of argument, and after the oral evidence had been given. This point, which Mr. Harris referred to as a 'half-way house', was that even if the Deceased did have a valuable beneficial interest in the House immediately before his death, so that there was value attributable to the House to be included in the value of his estate for IHT purposes, that value was not the full open market value of the House, but fell to be discounted to reflect the value of an equitable interest of some description in the House to which the Appellant was entitled by reason of his having carried out works of repair and improvement to the House at his own expense after going into occupation of it and before the date of the death of the Deceased.

5. The Tribunal indicated that it would not allow this new point to be taken if to do so would cause unfair prejudice to HMRC. Mr. Davey submitted that HMRC were prejudiced, but not severely prejudiced and that he was able to deal with the new point. On that basis we allowed the new point to be taken.

6. We will say at this stage that we have decided that the Appellant fails on both the point raised in 2008 and the new point (which together we refer to below as "the equitable ownership points"), for reasons which we give later in this decision.

The evidence

7. On the first day of the hearing (over six years after the Notice of Appeal was filed) Mr. Harris produced a document on which he sought to rely in connection with the equitable ownership points. The document was a copy of a Court Order, dated 4 June 1992 and made in the Milton Keynes County Court, Child Care and Hearing Centre, in matrimonial proceedings between the Appellant's wife, as Petitioner, and the Appellant as Respondent. Mr. Davy formally objected to its being introduced in evidence, pointing out that the Tribunal has power under the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ("the Rules) – rule 15(2)(b) – to exclude it. Again, we would have excluded the evidence if we had thought that it would be unfair to HMRC to admit it. But we concluded that the document did not materially assist the Appellant's case and were content formally to admit it.

8. We also had before us two bundles of documentary evidence. In addition, the parties had agreed a Statement of Agreed Facts in October 2010 for the purposes of the appeal. Joseph Nicholas Hanson (the Appellant), Daphne Hanson (the Appellant's mother and the widow of the Deceased), as witnesses of fact each made a Witness Statement and gave oral evidence at the hearing of the appeal. We also received a Witness Statement and oral evidence from each of William John Abbott FRICS, FAAV and Richard Frank Stow MRICS, FAAV as experts in agricultural valuation, instructed respectively on behalf of the Appellant and the Respondents ("HMRC"). From the evidence we find the following facts.

The facts

9. Immediately before his death on 9 December 2002, the Deceased, who was the Appellant's father, held the House (11 The Green, Great Horwood), according to the terms of the Settlement, on trust for himself for life without impeachment for

waste with remainder on trust for the first son of his to survive him and attain the age of 21 years absolutely.

10. The Appellant was the first son of the Deceased to survive him and attain the age of 21 years. He also became, by virtue of a Deed of Appointment and Retirement dated 17 February 2006 the sole trustee of the Settlement.

11. The House is the main residence at 11 The Green and is sometimes called 'the Old Bakehouse'. It was, at the death of the Deceased, a farmhouse within the meaning of section 115(2) IHTA. There is nearby a subsidiary residential property, 11A The Green, a conversion of a former building, which was completed in 1978. No claim for agricultural property relief for inheritance tax ("IHT") purposes is made in respect of 11A The Green.

12. The House is a detached residence, a listed building (Grade II) dating, it is thought, from the 17th century. It had been occupied by the father of the Deceased, William Hanson, the settlor of the Settlement ("William Hanson Senior"), for many years until 1942. William Hanson Senior apparently moved at that time from the House to Home Farm, Great Horwood, a farm house in the same village which was also, put generally, in the ownership of the family.

13. However the wife of William Hanson Senior, the mother of the Deceased, continued to live at the House until her death in 1946.

14. This coincided with the engagement of the Deceased and Daphne Hanson (née Viccars), who comes from a family which has probably been farming in the village of Great Horwood since the 17th century. William Hanson Senior made the House available to the Deceased and his new wife as a home for them from their marriage in 1947. At that time (before the Settlement was made in 1957) the House was owned by William Hanson Senior.

15. William Hanson Senior died in 1960, and in 1961, by reference to his death, it was agreed with the Inland Revenue that the House qualified for agricultural relief (presumably from estate duty).

16. The House continued to be occupied by the Deceased and his wife, Daphne Hanson, from 1947 to 1978. In 1978, when the conversion of 11A The Green was completed, the Deceased and Daphne Hanson moved out of the House and into 11A The Green, while the Appellant and his family moved into the House.

17. On 20 December 1987, which was at about the time when the Appellant and his wife separated (they later divorced but have since re-married), the Appellant signed a document, which was witnessed by a third party. The document was as follows:

> "The Old Bakehouse,
> 11 The Green,
> Great Horwood.

> This is to state that in 1978 I agreed to my father, [the Deceased], taking possession of the ruined building adjacent to the Bakehouse yard, known as the coach house, in order to demolish it and to re-build entirely at his own expense a cottage, which would then become his sole property.
>
> This was done in order to enable me to move into the Old Bakehouse."

18. During the life of William Hanson Senior, the family farm extended to some 800 acres, being a number of parcels of agricultural land sited around the village of Great Horwood and the neighbouring, smaller, settlement of Singleborough.

19. Following the death of William Hanson Senior the family farm was run by the Deceased and his brother, William ("William Hanson Junior"), in partnership. The Appellant, and his brother Andrew ("Andrew Hanson") – the sons of the Deceased – joined the partnership in 1986.

20. In about 1991, the Deceased and his brother, William Hanson Junior, felt that they could no longer work together and negotiated a partition of the various family landholdings between them. Some parcels of land came to be owned separately, by the Deceased or William Hanson Junior, and some came to be owned jointly by them.

21. Home Farm, Great Horwood, where William Hanson Senior had lived at the end of his life, came to be owned by William Hanson Junior and his family, who still farm there. The Deceased retained the benefit of a charge on Home Farm until his death. This charge secured a loan which was repaid on the death of the Deceased.

22. Following the partition in about 1991, the parcels of land part-owned and occupied by the Deceased amounted to some 280 acres. The farming carried on was mixed farming, consisting of the keeping of cattle and sheep and some arable farming.

23. It was at or about this stage that the Appellant and his wife were experiencing matrimonial difficulties and the Court Order dated 4 June 1992 (referred to above) was made. That Court Order contemplated that a document referred to as the 'Second Deed of Partition' would be 'executed forthwith' and on that basis the Appellant was ordered to pay to his wife a lump sum of £90,000 on or before 31 August 1992 and no later than 4 June 1995 a further lump sum of £20,000.

24. The 280 acres part-owned by the Deceased were from the time of the partition farmed by him, the Appellant and Andrew Hanson in partnership until at a subsequent date the partnership was dissolved and only the Appellant continued to farm. On this occasion there was a further splitting of the land holdings. The Deceased sold about 100 acres of farmland. From the proceeds of sale, the Deceased helped the Appellant by, for example, contributing to the cost of re-siting a 5,000 square foot agricultural building from the curtilage of the House to a site at Singleborough. Andrew Hanson, who did not continue in farming, took some small areas of land which had development potential. The Appellant took

into his own ownership about 128 acres comprising two parcels of land to the west of Great Horwood. He continued at that time living at the House, from which he ran the farming operations. The Appellant farmed those 128 acres and also the land remaining in the part-ownership of the Deceased (amounting to some 25 acres) together with another parcel of about 42 acres. He also farmed another parcel of about 20 acres, which was rented from a third party. This was the position at the date of death of the Deceased (9 December 2002).

25. At the date of his death the Deceased retained a half share in the ownership of a parcel of some 36 acres of land which was occupied and farmed by his brother William Hanson Junior and an interest in a cottage occupied by William Hanson Junior.

26. A letter to the Tribunal dated 24 November 2011 from Christopher Mahood of HMRC's Solicitor's Office which had been reviewed before sending by the Appellant's representative, and was sent on behalf of both parties, reported that during correspondence the issues in the appeal had been narrowed by concessions made by each side.

27. HMRC conceded that 'if it were correct to have regard to the totality of the land farmed from [the House]' – see: paragraph 24 above – then it was confirmed that '[the House] would satisfy the requirements of [section 115(2) IHTA]'.

28. The Appellant's representative similarly conceded that if 128 acres in the Appellant's ownership at the death of the Deceased could not (contrary to his submissions to the Tribunal) be taken into account, 'there is insufficient supporting land to bring [the House] within [section 115(2) IHTA]' – but the concession was expressly made without prejudice to 'the other issues in dispute'.

29. Following the death of the Deceased, the Appellant moved out of the House and took up residence in a newly built house, Abbey Farm, Singleborough. The widow of the Deceased, Daphne Hanson also moved out of 11A The Green and both properties were offered for sale through Cluttons. No sale was achieved and the Tribunal understands that the House was subsequently let to a third party. The Appellant now farms in partnership with his wife.

30. The parties have agreed that the open market value of the House as at the date of the death of the Deceased was £450,000.

31. On 9 March 2003, the Appellant and Andrew Hanson (who were appointed in the Will of the Deceased to be his executors and trustees) signed an Inland Revenue Account for Inheritance Tax (form IHT 200) in relation to the death of the Deceased. At section D of the form, the question: - Did the deceased have any right to any benefit from any assets held in trust or in a settlement at the date of death? - was answered 'Yes', and the relevant supplementary pages (D5) noted the Settlement and the relevant settled property as '11 The Green, Great Horwood' to which value of £520,000 was assigned, and '11A The Green, Great Horwood (70% beneficial interest)' to which a value of £50,400 was assigned –

the remaining 30% beneficial interest being declared as the Deceased's share in a joint asset.

32. In the claim for agricultural relief (D13), it was stated with respect to the House that it 'was the subject of [the Settlement]. [The Deceased] was the tenant for life', and '[the Deceased's] son [the Appellant] moved into the property in 1978'. The question: - Did the deceased have the right to vacant possession immediately before the death, or the right to obtain it within 24 months? - was answered 'Yes'. The form stated that 'if the answer is "Yes" say how the deceased would have been able to obtain vacant possession', and the following comment was inserted: - '[the Deceased's] son occupied the property under a Licence. He did not pay any rent.'

33. When she gave her oral evidence (which we accept and find facts accordingly), Daphne Hanson was asked whether her son, the Appellant, could have been asked to leave the House. She replied: 'He could have been, but he never would have been. No-one would have asked Nick [the Appellant] to move out.'

34. In her evidence she presented a picture of the extended Hanson family living and farming in Great Horwood and owning a variety of houses and cottages there. These houses and cottages were occupied by family members according to suitability and availability. There was not normally any document entered into to define the terms of occupation. There had been no document entered into when the Appellant moved into the House in 1978. There had been what Daphne Hanson described as a 'Gentleman's agreement' that, if the Appellant predeceased his father, the House would go to Andrew Hanson. This had been 'fully understood' by everyone concerned.

35. The Appellant carried out improvements to the House during the period of his occupation of it. These included the installation of oil-fired central heating, the replacement of window frames on the front elevation, the rebuilding of worn brickwork on the front elevation, the refurbishment of three attic rooms, the installation of a modern kitchen, the installation of modern bathroom fixtures and the refiguration of internal walls and re-wiring the House. Mr. Abbott estimated that the value of these works if they were to be done in 2011 would be about £175,000. He however produced no documentation, such as estimates from third parties to support the value given. The works were, in fact carried out in stages as the Appellant could afford to do them. His evidence was that he spent about £1,800 in 1980 to install central heating, about £3,000 in 1984-1985 on new windows, about £2,000 in 1985-1986 to repair the brickwork on the front elevation, about £15,000 in 1997 to repair the attic ceilings and about £5,000 in 2000 on re-wiring.

36. Although the Appellant paid no rent in respect of his occupation of the House, he was responsible for all the outgoings and had to carry out repairs. The works which he carried out (which were above and beyond what it would be normal to expect a farmworker in occupation, but paying no rent, to carry out) were done at

his expense with the full knowledge of the trustees of the Settlement and of the Deceased, but the Deceased never executed any written document to disclaim or assign his interest in the House.

37. The Appellant's evidence was that he understood that his father, the Deceased, was giving up his share of the property subject to the Settlement to him. He agreed, however, that he had signed the form IHT 200 believing its contents to be true at the time. He accepted that, if he had died before the Deceased, the House would have gone to his brother Andrew Hanson, and that this would have been the position even after he had moved into the House in 1978.

38. There was in evidence a letter written to Mr. Harris by Mrs. Diana Dixon (née Hanson), the Appellant's sister and daughter of the Deceased, who lives in Puyallup, Washington, USA. The letter is dated 7 August 2009 and its text is as follows.

> 'I have lived in America since 1977, and have only travelled back to England once, last year, in 2008.
>
> On hearing about the problems with The Bakehouse I thought that I should write and tell you that I spoke to my parents often, on the phone. I remember my father telling me about the plans for converting The Old Coach House into a little house for himself and my mother, and that he was giving up all rights to the Bakehouse in favour of Nick [the Appellant].
>
> He told me that his main reason for doing this was because The Bakehouse required a great deal of work doing on it, which he did not want to undertake as, according to the trust document, he did not own the property. Also, The Bakehouse was too large for just the two of them.
>
> I hope that this letter will assist in confirming what my father's wishes were all those years ago.'

39. Mr. Stow's evidence (which we accept) was that if the Deceased had had, at the date of his death, the entire ownership of the approximately 61 acres of farm land of which he had, in fact, part-ownership (1/3 ownership of 5 acres occupied by the Appellant; 1/6 ownership of 20 acres occupied by the Appellant; and ½ ownership of 36 acres occupied by William Hanson Junior or his family), he would have considered that a marginal case for constituting a viable farming unit. However the fact that the ownership was only part-ownership meant that it could not be considered as a viable farming unit.

Whether the Deceased had any valuable interest in the House at the time of his death, and, if so, whether the value of such interest ought to be discounted to reflect the valuable of an equitable interest in the House to which the Appellant was entitled by virtue of works of repair and improvement carried out by him

40. The issues referred to in the heading to this paragraph reflect the equitable ownership points to which we have made reference at paragraph 6 above. We said there that we had decided that the Appellant fails on both these points and we now explain briefly our reasons for this decision.

41. Mr. Harris summarised his submission on the first of these equitable ownership points in his Skeleton Argument as follows.

> "The Deceased gave his Son [the Appellant] the benefit of the Deceased's interest under the trust [the Settlement].
>
> By his conduct the Deceased put his Son into enjoyment of the Deceased's interest and took no steps to recover that interest.
>
> The Trustees were aware that the Son had entered into enjoyment of the Deceased's interest and took no steps to interfere.
>
> The Son carried out substantial works with the full knowledge of the Deceased and of the Trustees, neither of whom objected nor claimed that the value of such works belonged to them as former life tenant or Trustees.
>
> By his conduct the Deceased was, at the date of his death, estopped from claiming an interest in the House whilst the Son was still alive.
>
> By their conduct the Trustees were, at the date of death of the Deceased, estopped from claiming that any of the value of the works done by the Son belonged to them as Trustees."

42. Mr. Davy responded by submitting that the Deceased made no effective disposition of his interest under the Settlement (which was an interest in possession in the House). That interest was an equitable interest and any disposition of it was by law required to be in writing 'signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will' (section 53(1)(c) Law of Property Act 1925 ("LPA")).

43. Mr. Davy submitted that there was no evidence, or even any suggestion, that a dispositive document was executed in respect of the Deceased's departure from the House in 1978 and therefore the provisions of section 53(1)(c) LPA were not met.

44. We accept Mr. Davy's submission. There was no such dispositive document and the provisions of section 53(1)(c) LPA were not met. Therefore, contrary to Mr. Harris's submission, the Deceased did not give the Appellant the benefit of his (the Deceased's) interest under the Settlement.

45. Mr. Davy further submitted that the facts of the case disclosed no resulting, implied or constructive trust, and that the Appellant could not therefore claim any advantage from section 53(2) LPA, which provides that '[t]his section does not affect the creation of resulting, implied or constructive trusts'.

46. He referred the Tribunal to Gray, *Elements of Land Law* (5th edition 2010) paragraph 7.1.12 for a modern exposition of the law in relation to resulting trusts. That paragraph is as follows:

> 'Resulting trusts are intrinsically concerned with the money contributions laid out in the purchase of an estate in land. The beneficial ownership implied under a resulting trust gives effect to the intention presumptively disclosed by the pattern of money purchase. Thus, in the absence of any evidence of countervailing intention, a financial contribution towards the

> acquisition of a legal estate in the name of another normally generates a resulting trust in favour of the contributor, the latter's beneficial entitlement being directly proportional to his or her cash contribution.'

47. We accept that as being a correct statement of the law. Since there was no acquisition of the House in 1978 (or thereafter), no resulting trust in favour of the Appellant can have been generated.

48. The Appellant's case is however chiefly founded on the submission that the facts disclose a constructive or implied trust of the House in the Appellant's favour. In this connection, Mr. Davy referred the Tribunal to Gray, *ibid.* paragraph 7.1.13. That paragraph is as follows:

> 'By contrast, constructive trusts are intimately concerned not so much with money, but rather with expressly or implicitly bargained commitments respecting equitable entitlement. A constructive trust arises in circumstances where it would be unconscionable not to give effect to a common intention which has provided the basis of the parties' mutual expectations and dealings. A constructive trust emerges, in effect, where it would be fraudulent for the owner of a legal estate to maintain his sole beneficial ownership in derogation of rights which have already been bargained away informally to another. The existence of the prior agreement, once relied on to the detriment of the claimant party, renders it improper for the legal owner to assert his beneficial title to the exclusion of the claimant. To prevent such inequitable outcomes, equity imposes or 'constructs' a trust to give effect to the parties' antecedent bargain as to their respective equitable rights.' (*Green v Green* [2003] UKPC 39 at [12]; *Grant v Edwards* [1968] Ch. 638 at 646H-647A; *Melbury Road Properties 1995 Ltd. v Kreidi* [1999] 3 EGLR 108 at 110L; and *Thwaites v Ryan* [1984] VR 65 at 91 are cited in support.)

49. Again, the Tribunal accepts this paragraph as being a correct statement of the law. It is clear from both paragraphs that an exception to the rule in section 53(1)(c) LPA must be founded on an intention demonstrated by evidence that a person other than the legal owner should have a share or all of the beneficial ownership of the land in question.

50. In the case of a constructive trust, the intention must be a common intention held by the legal owner and the other person (the claimant of the beneficial interest), that the claimant should have a beneficial interest in the land. In the circumstances of this case such a common intention held by the Deceased and the Appellant must be proved.

51. In the Tribunal's judgment there is no evidence to prove such a common intention in this case. In fact, all the evidence goes the other way. The form IHT 200, signed by the Appellant on 9 March 2003 states unequivocally that at the date of his death the Deceased had the right to benefit from the House to a value of £520,000 – which the Tribunal takes to be its full value, given that the probate (open market) value eventually agreed was £450,000 – of which he was tenant for life and had the right to vacant possession immediately before the death or the right to obtain it within 24 months. Further there was the express statement in the form IHT 200 that the Appellant occupied the House under a licence and that he did not pay any rent. The statement that the Appellant occupied the House under a licence is inconsistent with his having any beneficial interest in it under a constructive or any other trust. Daphne Hanson's evidence was that the Appellant

could have been asked to move out of the House but that he never would have been asked to do so. This is consistent with the Appellant's occupation under a licence in circumstances where the House was held by a family trust under the terms of which the expectation was that the Appellant would obtain a beneficial interest in the House after the death of the Deceased.

52. As stated above, the Settlement provided that the House was held on trust for the Deceased for life with remainder on trust for the first son of his to survive him and attain the age of 21 years. Daphne Hanson's evidence was that there was a 'Gentleman's agreement' that if the Appellant predeceased his father (the Deceased) then the House would go to Andrew Hanson, the younger son of the Deceased. The Appellant's oral evidence confirmed this understanding. Thus it is clear on the evidence that the family understood what the terms of the Settlement were and that they respected them and intended that they should apply. The weight of the evidence is entirely inconsistent with the submission that the House was, before the death of the Deceased, held to any extent on a constructive or other trust for the benefit of the Appellant. The letter from Mrs. Dixon (see: above) is a further indication that the family respected the terms of the Settlement. It does not provide convincing evidence that there was a common intention that the Appellant would acquire any beneficial interest in the house before the death of the Deceased, and in any case cannot be accorded much weight because Mrs. Dixon was not available to give oral evidence and be cross-examined on the contents of her letter.

53. Mr. Harris relied on *Hussey v Palmer* [1972] 1 WLR 1286. In that case the Court held that the legal owner (Mr. Palmer) could not conscientiously keep the property for himself alone, but ought to allow another person (Mrs. Hussey, his mother-in-law, who had paid for an extension to the property to provide a bedroom for herself) to have a beneficial share in the property (see: *ibid.* p.1290A-B). In this case the facts do not demonstrate a case where it would be unconscionable not to allow the Appellant a share in the beneficial interest in the House before the date of the death of the Deceased. The Appellant went into occupation of the House in 1978. It was thereafter his home and the home of his family. He paid no rent. He had the expectation that on surviving his father he would come into full beneficial ownership of the House. These facts explain his expenditure on repairs and improvements to the House after 1978. The Appellant has not been able to show that the expenditure was incurred in reliance on any promise, representation or assurance that he would thereby derive or acquire any beneficial interest in the House in addition to the expectation he always had.

54. Mr. Harris submitted that the principle of proprietary estoppel assisted the Appellant. He cited paragraph [41] of the judgment of H.H. Judge Roger Kaye QC, sitting as a Judge of the High Court, in *In re: the Estate of Frank Edward Suggitt deceased and in the matter of the Inheritance (Provision for Family and Dependents) Act 1975* [2011] EWHC 903 (Ch) (Judgment handed down on 20 April 2011). That paragraph is as follows:

> 'The principles may be summarised as follows. To establish a claim based on proprietary estoppel the claimant must prove a promise, representation or assurance made to him or her, reliance on that promise by the claimant and detriment in consequence of his/her reasonable reliance.'

55. The Tribunal holds that the Appellant has been unable on this basis to establish any claim based on proprietary estoppel.

56. These are the reasons for the Tribunal's decision that the Appellant fails on both the equitable ownership points to which we have made reference at paragraph 6 above.

The issue of whether or not the House was agricultural property within the meaning of section 115(2) IHTA

57. The provisions of IHTA which are particularly relevant to a consideration of this issue are section 4(1) (transfers on death), section 5(1) (meaning of estate), section 49(1) (treatment of interests in possession), section 115(2) (meaning of agricultural property), section 116(1) (agricultural property relief), and section 117 (minimum period of occupation or ownership).

58. Section 4(1) IHTA provides:

> 'On the death of any person tax shall be charged as if, immediately before his death, he had made a transfer of value and the value transferred by it had been equal to the value of his estate immediately before his death.'

59. Section 5(1) IHTA relevantly provides:

> 'For the purposes of this Act a person's estate is the aggregate of all the property to which he is beneficially entitled, …'

60. Section 49(1) IHTA provides:

> 'A person beneficially entitled to an interest in possession in settled property shall be treated for the purposes of this Act as beneficially entitled to the property in which the interest subsists.'

61. Section 115(2) IHTA provides:

> In this Chapter [IHTA Part V, Miscellaneous Reliefs; Chapter II, Agricultural Property] "agricultural property" means agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property.'

62. Section 116(1) IHTA provides:

> 'Where the whole or part of the value transferred by a transfer of value is attributable to the agricultural value of agricultural property, the whole or that part of the value transferred shall be treated as reduced by the appropriate percentage, but subject to the following provisions of this Chapter.' NB The 'appropriate percentage' is defined in section 116(2).

63. Section 117 IHTA provides:

> 'Subject to the following provisions of this Chapter, section 116 above does not apply to any agricultural property unless-
>
> (a) it was occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of the transfer, or
> (b) it was owned by him throughout the period of seven years ending with that date and was throughout that period occupied (by him or another) for the purposes of agriculture.'

64. In outline, therefore, for relevant purposes, the scheme of IHTA is that IHT is charged on the death of a person on the value of the property to which he was beneficially entitled or in which he had an interest in possession immediately before his death. However, where such property included 'agricultural property' as defined, then a reduction of the 'appropriate percentage' is applied to the agricultural value of such 'agricultural property'. It is a condition for such a reduction that the 'agricultural property' must have been occupied for the purposes of agriculture - either by the deceased throughout the period of two years ending with his death, or by the deceased or another person throughout the period of seven years ending with the deceased's death.

65. To obtain the relief, therefore, the claimant must show not only that the property is 'agricultural property' as defined, but also that it had been occupied for the purposes of agriculture throughout the relevant period ending with the death of the deceased.

66. With this background in mind we examine the definition of 'agricultural property' which is in issue in this appeal.

67. The core of the definition of 'agricultural property' in section 115(2) IHTA is 'agricultural land or pasture'. This is expanded to include woodland and any building used in connection with the intensive rearing of livestock or fish, provided that the woodland or the building (as the case may be) is occupied with agricultural land or pasture.

68. The definition is further expanded to include 'such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to *the property*' (our emphasis). It is common ground between the parties that the House is a farmhouse.

69. It is necessary to identify 'the property' mentioned in the last limb of the definition.

70. It is not entirely obvious what 'the property' is, because no 'property' as such is referred to earlier in the definition. However it appears to the Tribunal that 'the property' has been adopted as a shorthand by the draftsman to refer not only to 'agricultural land or pasture' at the core of the definition, but also to 'woodland and any building used in connection with the intensive rearing of livestock or fish' which 'is occupied with agricultural land or pasture'.

71. The use of the definite article in the phrase '*the* property' can be understood in this way as a reference back to the 'property' – i.e. the entirety of the property described in the earlier part of the definition.

72. It is noteworthy that the language used to include within the definition 'woodland and any building used in connection with the intensive rearing of livestock or fish', which imposes a condition that such woodland or building must be occupied with agricultural land or pasture and that such occupation is ancillary to that (i.e. to the occupation) of '*the* agricultural land or pasture' – a reference back to the 'agricultural land or pasture' with which the woodland or building is occupied – does *not* require that the woodland or building must be occupied with *any particular* agricultural land or pasture, provided that the occupation of the woodland or building is ancillary to the occupation of *some* agricultural land or pasture. This is the significance of the lack of any article (definite or indefinite) immediately before the phrase 'agricultural land or pasture' where it occurs for the second time in the definition in section 115(2) IHTA.

73. The definition does incidentally import the condition that 'agricultural land or pasture' at the core of the definition must be 'occupied'. However that requirement is consistent with the provisions of section 117 IHTA which impose an occupation condition for the application of the relief, providing that such occupation must be (or have been) for a particular purpose and must extend (or have extended) over a specified period.

74. The condition that farmhouses within the definition must be of a character appropriate to the foregoing expanded definition of agricultural land or pasture does not on the face of it require that the character of such farmhouses must be appropriate to *any particular* agricultural land or pasture, woodland or building. But it does suggest that such farmhouses must be of a character appropriate to agricultural land or pasture, woodland or building where the dominant occupation is occupation of agricultural land or pasture.

75. In other words, the language of the definition suggests that the nexus between cottages, farm buildings and farmhouses within the definition with agricultural land or pasture, woodland or buildings is a nexus of occupation rather than of ownership.

76. Mr. Harris's submission on the meaning of the definition of agricultural property in section 115(2) IHTA was in line with the above reasoning. He contended that in applying the definition 'we may look at the reality of the agricultural unit and may take into account land occupied as part of the farming business in determining the purpose for which the farmhouse is occupied'.

77. Mr. Davy, supporting HMRC's official view of the meaning of section 115(2) as it applies in relation to cottages, farm buildings and farmhouses, submits that the words 'the property' in the phrase 'of a character appropriate to the property' refer not to agricultural land or pasture, woodland or buildings in common occupation with the cottages, farm buildings or farmhouses, but to agricultural

land or pasture, woodland or buildings in common occupation *and ownership* with the cottages, farm buildings or farmhouses.

78. Mr. Davy submitted that the interpretation for which he contended 'sits most naturally with the scheme of IHTA 1984 as a whole'. He referred to *Rosser*, as the only reported case to deal with the matter at any length, and invited the Tribunal to adopt substantially the same position as that endorsed in *Rosser*, though also making explicit that as well as common ownership there must be common occupation too. The relevant passage from Mr. Special Commissioner Tildesley's Decision in *Rosser* is as follows:

> '48. There is no decided authority on the nature of the nexus between the buildings and the property. Morritt LJ commented on this issue at the end of his judgment in [*Starke*] but his remarks were not part of the decision and were not argued before the court. He said:
>
> > "Thus the question whether the property with which this appeal is concerned is excluded from part 3 because there is no other property in the same ownership to which its character may be appropriate does not arise for decision. Counsel for the Crown indicated that the official view is that there must be some nexus between the property alleged to fall within part 3 and other agricultural land or pasture and that such nexus must be derived from common ownership as the structure of the inheritance tax legislation deals with the diminution in the value of the estate of the transferor. The alternative view might be that the nexus, which must surely be required, may be provided by common occupation without common ownership thereby recognising the reality of the agricultural unit of which, as in this case, the buildings evidently formed part."
>
> 49. Mr Twiddy [for HMRC] submitted that the nexus must be derived from common ownership rather than common occupation. To arrive at this conclusion it is necessary to consider s.115(2) in the context of the 1984 Act as a whole and the structure for inheritance tax. Under the 1984 Act inheritance tax is charged on the value transferred by a chargeable transfer [(s.1)]. A chargeable transfer is a transfer of value which is made by an individual but is not an exempt transfer [(s.2)]. A transfer of value is defined as a disposition made by a person as a result of which the value of his estate immediately after the disposition is less than it would be but for the disposition and the amount by which it is less is the value transferred by the transfer [(s.3(1))]. Under s.4(1) tax shall be charged on the death of any person as if, immediately before his death, he had made a transfer of value and the value transferred by it had been equal to the value of his estate immediately before his death. The common denominator throughout this charging regime is the word 'estate', the value by which it has decreased during lifetime transfers or its value at death will provide the reference point for the amount of tax charged. It follows from this that the farm buildings and the property referred to in s.115(2) must be part of the estate of the person at the time he makes the disposition, including a deemed disposition at death.
>
> 50. I agree with Mr. Twiddy's analysis. I conclude, therefore, that the nexus between the farm buildings and the property in s.115(2) is that the farm buildings and the property must be in the estate of the person at the time of making the deemed disposition under s.4(1) of the 1984 Act. The alternative view that the farm buildings are in the estate but the property to which they refer is not is untenable. This view would seriously undermine the structure for inheritance tax and create considerable uncertainty about when tax is chargeable and the amount of the value transferred …'

79. Mr. Davy developed his support for the analysis which appealed to the Special Commissioner in *Rosser*, by referring us to section 116(1) IHTA. The crucial words implementing agricultural property relied are in that subsection, as follows:

> 'Where the whole or part of the value transferred by a transfer of value is attributable to the agricultural value of agricultural property, the whole or that part of the value transferred shall be treated as reduced by the appropriate percentage …'

80. If one substitutes the definition of 'agricultural property' in section 115(2) for the expression 'agricultural property' where it appears in section 116(1), it is, Mr. Davy submitted, plain that the connection, or nexus, between cottages, farm buildings and farmhouses qualifying as agricultural property to agricultural land or pasture, including woodland and any building used in connection with the intensive rearing of livestock or fish must be one of common occupation and ownership. Otherwise, he submitted, the definition would not be in harmony with the rest of the inheritance tax legislation, and in particular the legislation on agricultural property relief and would, indeed, 'drive a coach and horses through section 116(1)'.

81. Performing the exercise of incorporating the definition of 'agricultural property' into the text of section 116(1) could give the following result ("Version A"):

> 'Where the whole of the value transferred by a transfer of value is attributable to the agricultural value of
>
> agricultural land or pasture
> including woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture;
> and also including such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property,
>
> the whole or that part of the value transferred shall be treated as reduced by the appropriate percentage …'

82. Alternatively, if the exercise is to see whether section 116(1) could apply to particular cottages, farm buildings or farmhouses, incorporating the definition of 'agricultural property' into the text of section 116(1) could give the following result ("Version B"):

> 'Where the whole of the value transferred by a transfer of value is attributable to the agricultural value of
>
> such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to agricultural land or pasture

> including woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture,
>
> the whole or that part of the value transferred shall be treated as reduced by the appropriate percentage …'

83. It can be seen that Version A above assumes a transfer of value where the value transferred is attributable to sufficient agricultural land or pasture and that it can be said that any farmhouse included in the transfer is of a character appropriate to such agricultural land or pasture, whereas Version B does not.

84. Mr. Davy, effectively arguing in favour of Version A above, adopted a suggestion by the Tribunal that his case assumed that the purpose of agricultural property relief was to give relief for land, not houses, and that relief was only given for houses in so far as they are appurtenances to land for which relief is given. On this basis sufficient agricultural land or pasture needs to be transferred by a transfer of value to enable any relief to be given for a farmhouse, and then the farmhouse must be of a character appropriate to the agricultural land or pasture transferred.

85. The Tribunal is not persuaded by Mr. Davy's submissions. We consider that the meaning discernible from the words of the definition in section 115(2) IHTA is that cottages, farm buildings and farmhouses in the third limb of the definition must be of a character appropriate to agricultural land or pasture (including woodland and any building within the second limb of the definition) in the same occupation, but that it is not required that the cottages, farm buildings and farmhouses should be in the same ownership as the agricultural land or pasture (as expanded by the second limb of the definition). Furthermore, we consider that such meaning is wholly consistent with the scheme and purpose of the inheritance tax legislation in general and of agricultural property relief in particular.

86. We agree with Mr. Davy that the definition in section 115(2) IHTA must be construed in such a way as 'sits most naturally with the scheme of IHTA 1984 as a whole' (to quote from his Skeleton Argument at paragraph 32).

87. But we consider that our preferred construction (see: paragraph 85 above) fits the scheme and purpose of the legislation best for the following reasons.

88. First, for the reasons given in paragraphs 67 to 75 above, we regard our preferred construction as the correct literal construction of the definition.

89. Secondly, we note that Parliament has chosen to define 'agricultural property' for the purposes of the relief in a self-contained definition in section 115(2) IHTA. This suggests to us that the meaning of the phrase is intended to be found from a construction of the words of the definition rather than by inferences drawn from other areas of the legislation.

90. Thirdly, it is not clear to us what particular inferences should properly be drawn from other areas of the legislation, in particular section 116(1) IHTA. We have compared Version A and Version B in paragraphs 81 to 83 above. They suggest different inferences, but it is not clear to us that either Version is more helpful than the other. We also note that the expression 'agricultural property' occurs in many other places in Chapter II of Part V, IHTA, and it may be that other inferences might be suggested by a consideration of the definition in the light of the other provisions where the definition is used.

91. Fourthly, it seems to us that the purpose of the relief is to reduce the tax burden on agricultural property, including farmhouses, which have been occupied for the required period(s) for the purposes of agriculture (see: section 117(1) IHTA) – being farmhouses of a character appropriate to the property occupied for those purposes. This statutory purpose does not seem to us to require that such a farmhouse must be part of a larger agricultural estate whose value is being charged to IHT at the same time and by reference to the same transfer.

92. Fifthly, we respectfully disagree with the reasoning of Judge Tildesley in *Rosser*. The meaning of the definition which we prefer is, we consider, certainly not untenable. Indeed, it was suggested, as an alternative view, by Morritt LJ in *Starke*. The fact that the word 'estate' figures in all the relevant charging provisions does not seem to us to be relevant to the construction of the definition of 'agricultural property' which does not, incidentally, mention the word 'estate'. The definition is to be used to identify the 'agricultural property' in any particular case and, once that has been done, the charging provisions, with their reference to the 'estate' being charged, will operate, with none, or the whole, or part, of the value transferred being treated as reduced by the 'appropriate percentage' according to what, if any, 'agricultural property' has been identified. We see no consequence from the meaning of the definition which we prefer which would 'undermine the structure for inheritance tax' or 'create considerable uncertainty about when tax is chargeable and the amount of value transferred' (*cf. Rosser* at [50]).

93. For these reasons, we have decided to allow the appeal and hold that the interest of the Deceased in the House (11 The Green, Great Horwood) under the trusts of the Settlement was agricultural property within the meaning of section 115(2) IHTA in relation to the deemed disposal for IHT purposes on the death of the Deceased on 9 December 2002.

Right to apply for permission to appeal

94. This document contains full findings of fact and reasons for our decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Rules. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN WALTERS QC

JUDGE OF THE FIRST-TIER TRIBUNAL
RELEASE DATE: 31 January 2012