

ENGLAND AND WALES / JUDGMENT

Iles v Iles

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Neutral Citation Number: [2012] EWHC 919 (Ch) IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION NEWCASTLE UPON TYNE DISTRICT REGISTRY Case No: 0MB00201 Royal Courts of Justice Strand, London, WC2A 2LL Date: 27/04/2012 Before : MR JUSTICE BRIGGS

- ----- Between : MISS REBECCA LOUISE SOPHIA ILES
- and - MRS MARGARET ROSE ILES Claimant Defendant
- -----
- ----- Mr Simon Goldberg (instructed by Punch Robson) for the Claimant
Mr Jonathan Rodger (instructed by Latimer Hinks Solicitors) for the Defendant Hearing
dates: 28, 29 March 2012
- -----

Judgment

Mr Justice Briggs : Introduction – The Issues 1. This judgment resolves preliminary issues in a claim for breach of trust by Rebecca Iles against her mother Margaret Iles, relating to land in Darlington forming part of the Forge Industrial Estate (“the Forge”). It is common ground that, following the death of Robert Iles, the claimant’s father and the defendant’s husband, in April 2000 and the administration of his estate in August 2001, the defendant has been registered as the sole proprietor of the disputed land being that described in Title Number DU177201, and in receipt of rents from occupying business tenants there. I shall call it the Disputed Land. 2. The issues which I have to decide are as follows:

- 1) Whether there is any sufficiently certain trust of the Disputed Land in favour of the claimant, binding on the defendant.
- 2) Whether the defendant is liable to account to the claimant for her receipt of rents from the Disputed Land between April 2000 and the present, less credit for payments to the claimant of, initially, £200 per month from April 2004, later increased. I am not asked to resolve any question of quantum, if liability to account is established. 3. The reason for the arising (and difficulty) of the first issue is that, although there exists a declaration of trust purportedly dated 8 January 1992 (“the 1992 Declaration of Trust”) executed by the defendant and Mr Iles at a time when they were the joint legal owners of the Disputed Land, it purports to identify the subject matter of the trust by reference to a schedule, no copy of which has ever been

found. The reason why the second issue arises (even if there was an effective declaration of trust of the Disputed Land in favour of the claimant) is because the defendant denies all knowledge of such a trust, prior to February 2009, her case being that her signature on the 1992 Declaration of Trust is one of several which she made purely at the direction of Mr Iles, without the slightest understanding of the nature or meaning of the documents she was signing. The Evidence 4. 5. Besides the original of the incomplete 1992 Declaration of Trust, there is a wealth of surviving material relating to the complicated conveyancing history of the Forge, including the Disputed Land. It is possible to reconstruct that history with reasonable precision from those documents. The issues as to what Mr Iles intended, and what (if anything) the defendant understood about the establishment of a trust of land for their daughter, have been addressed by a number of witnesses, including the claimant and the defendant, the claimant's partner Brian Hawthorne, two half-sisters of the claimant, being Mr Iles' daughters by an earlier marriage, Elizabeth Coates and Tracy Iles, and a friend of the claimant Ann Shields, all of whom were cross-examined. In addition the evidence of 6. 7. 8. 9. two tenants at the Forge (Mr Brian Holmes and Michael Hanratty) was admitted without challenge by the defendant. I consider that a witness statement by another of the claimant's friends (Emma Gallagher) was wholly irrelevant. This dispute between mother and daughter has been greatly aggravated (if not indeed caused) by a total and I fear irretrievable falling out between them in about 2008. This had nothing of itself to do with the issues in this case, but has led to serious mutual bitterness. To some extent this spilled over into the written evidence but, to their credit, they both kept their no doubt deeply held antipathy for each other well under control when giving oral evidence. Nonetheless, antipathy of that kind must inevitably give rise to serious reservations as to the weight that can be placed upon their uncorroborated testimony about matters in issue. By that I do not mean that they came to court determined to lie, but that their antipathies are likely to have caused them to think that they can remember matters which, in reality, have been created and solidified only in their imagination. That said, I found that the defendant's evidence was, although clearly and calmly given, considerably less reliable than that of her daughter, in particular because of the number of respects in which her evidence, and apparent instructions to her solicitors as reflected in correspondence, changed over time, in ways which she was unable to explain in cross-examination. Mr Hawthorne's evidence was, on one important factual matter, broadly corroborative of that of the claimant, but I have borne in mind that, as the alleged cause of the falling out between the claimant and the defendant, he cannot be treated as disinterested or entirely independent, even though he showed no signs of debilitating partiality under cross-examination. Mrs Coates and Miss Tracy Iles appeared to be straightforward and honest witnesses although, as members of a family afflicted by internal strife, I cannot ignore the real risk that irrelevant matters of which I am unaware may have affected their objectivity. Finally, Miss Ann Shields, a friend of the claimant who had briefly provided respite care, gave evidence about a conversation she had with the defendant in 2000. She appeared to me to have strong views about the rights and wrongs of this matter which she only partially contained. I have not therefore treated her as a wholly disinterested witness, although she had no obvious reason to be partial. The Facts

10. Mr Iles was in his late 40s by the time he married the defendant in 1978, after the failure of an earlier marriage from which he had several children. The claimant was born in April 1979. Mr Iles was variously described to me as a colourful rogue, a wheeler-dealer, and the Del-Boy of Darlington. 11. The defendant described her married life with Mr Iles as very traditional. She was in charge of the house, and excluded from everything to do with his business, in particular at the Forge. She said that, during his life, the extent of her involvement with the Forge was the signing of occasional documents at Mr Iles' request, without explanation as to their contents, and the occasional visit on a Friday morning to collect her week's housekeeping money when Mr Iles had omitted to leave it for her at home. I accept the general thrust of that evidence but I shall return in more detail 12. 13. 14. later to the question how far it left the defendant ignorant of the matters which I am about to describe. By 1983 the Iles family had already begun to assemble a property holding at the Forge, which appears to have been in a rundown and unsightly condition at the time. In July 1983 Mr Iles acquired an irregular strip of about 4,010 square yards for £10,000 and on 15 July caused the vendor Rosaire Limited to transfer it to himself and the defendant as trustees on the trusts of a declaration of trust of even date. I shall refer to the transfer and the declaration of trust as "the 1983 Transfer" and "the 1983 Declaration of Trust" respectively. I shall call the land thereby transferred as "the 1983 Trust Land". The 1983 Transfer and Declaration of Trust were both signed by Mr Iles and (despite her understandable lack of recollection) by the defendant. The Declaration of Trust provided that Mr Iles and the defendant were to hold the property, its proceeds of sale and the net rent and profits until sale as follows: "
- (1) In trust for the infant (the claimant) if and when she shall attain the age of Twenty One Years.
 - (2) On attaining by the infant of Twenty One Years the Trustees shall at the request and cost of the infant transfer the said property to the said infant.
 - (3) In the event of the said infant dying under the age of Twenty One Years the Trustees shall hold the net proceeds of sale and the net rents and profits until sale of the said property Upon Trust for themselves beneficially as joint tenants." The defendant said that these were two of the many documents she signed purely at Mr Iles' direction, with not the slightest understanding of their contents. I am prepared to give her the benefit of my considerable doubt about this. On any view however, the effect of the 1983 Transfer, which expressly transferred the 1983 Trust Land to Mr Iles and the defendant as trustees on the trusts of the 1983 Declaration of Trust was to create a trust of the land on the terms of the Declaration of Trust, even if the defendant had not signed it. Mr Rodger for the defendant eventually conceded that this was so.
15. Mr Rodger submitted that this (and all subsequent trust documents) was just a sham by Mr Iles designed to hoodwink the Inland Revenue. He pointed to the evidence (which I accept) that at no time before he died did Mr Iles accumulate rents for the claimant in a separate account. But he was of course maintaining the claimant at that time, and until his death, and

there was no evidence that the net rents from the 1983 Trust Land exceeded his cost of maintaining her. Taken as a whole, I consider that Mr Iles' conduct in relation to the trust in favour of the claimant shows that it was by no means a sham. 16. In August 1988 Darlington Borough Council served a Compulsory Purchase Order in relation to the whole of the Iles' holdings at the Forge. By then it included the 1983 17. 18. Trust Land held by them jointly, and other land held and beneficially owned by Mr Iles himself. It is evident from the schedule to the CPO that it was common ground between Mr Iles and the Council that the 1983 Trust Land was held on trust for the claimant. After very protracted negotiations, a deal was done with the Council under which there was a land exchange, implemented by a Deed of Exchange dated 6 December 1989 ("the 1989 Deed of Exchange") between Mr Iles, the defendant and the Council. In outline the Iles family gave up land (including most of the 1983 Trust Land) on the periphery of the Forge, and obtained in return land at its centre, consolidating their holdings there, together with £50,000 paid to Mr Iles alone as equality money. Part of the land at the centre released by the Council was transferred to Mr Iles beneficially, and part of it to Mr Iles and the defendant as trustees. One result of the 1989 Deed of Exchange was that the Iles family ended up with a holding at the Forge in which the boundaries between the residue of the 1983 Trust Land, the newly transferred land held as trustees and Mr Iles' own land looked like a jigsaw puzzle, and by no means corresponded with the layout of the rental units on the ground. Recognising that this was unsatisfactory Mr Iles (through solicitors) retained a surveyor, a Mr Alan Ayers, to identify a coherent block of land within the family holdings at the Forge identical in area to the original 1983 Trust Land, so that it could serve as a new replacement trust holding for the claimant. Under cover of a letter dated 27 November 1989 Mr Ayers identified on a plan a trapezoidal block (marked XYEFX on the accompanying plan, at page 732 in the trial bundle) as a suitable substitute holding identical in area to the 1983 Trust Land. That block is what I identified as the Disputed Land at the beginning of this judgment. In 1989 it comprised a small part of the 1983 Trust Land, land owned beneficially by Mr Iles and land transferred to Mr Iles and the defendant as trustees under the 1989 Deed of Exchange.

19. Matters then drifted until January 1992, when the following events occurred. On 8 January Mr Iles and the defendant attended a Mr Jowett at the offices of Jacksons (solicitors). He had been a partner in Jowett & Goyder, the firm which had instructed Mr Ayers in 1989, and prepared the 1989 Deed of Exchange. By 1992 he was a partner in Jacksons. There was a discussion (amongst other things) about the implementation of the plan to create a new trust holding for the claimant to replace the 1983 Trust Land. Mr Iles and the defendant signed a deed of exchange to effect the necessary land transfers as between Mr Iles (as beneficial owner) and Mr Iles and the defendant (as trustees). I shall call it "the 1992 Deed of Exchange". By clause 1 Mr Iles transferred to himself and the defendant a roughly square block in the centre of the Disputed Land "TO Hold the same unto Mr and Mrs Iles in fee simple UPON THE TRUSTS contained in a Deed of Trust of even date herewith". I will call that square block "the Central Part". By clause 2 Mr Iles and the defendant as trustees transferred to Mr Iles beneficially land at the Forge outside the Disputed Land. This included

part of the 1983 Trust Land and land received by them as trustees under the 1989 Deed of Exchange. 20. No declaration of trust was executed on 8 January 1992 as contemplated by clause 1 of the 1992 Deed of Exchange, nor was there at that date even a draft of such a document. On 28 January 1992 Mr Jowett wrote to Mr Iles to say that he had submitted the 1992 Deed of Exchange to the Land Registry, and he enclosed with his letter the draft of a declaration of trust for his comment. He referred to his and the defendant's recent attendance at his office. 21. The 1992 Declaration of Trust was finally executed by Mr Iles and the defendant later that year, probably after August, and backdated to 8 January 1992. I infer that the purpose of the backdating was to make it appear to be of even date with the 1992 Deed of Exchange. It had a front title page describing it as a "DECLARATION OF TRUST". Mr Jowett witnessed both Mr Iles' and the defendant's signatures. It was expressly declared to be supplemental to the 1989 and 1992 Deeds of Exchange. The recitals were as follows: "WHEREAS

- (1) At the date of the first Deed of Exchange hereinbefore referred to the Trustees were the registered proprietors of a certain property on the South side of the River Skerne at Darlington comprising title number DU104892 and had acquired the same with a view to creating a voluntary settlement on the terms hereinafter appearing.
- (2) By virtue of the said Deeds of Exchange the Trustees are seized of the property described in the Schedule hereto (hereinafter called "the Property") and are now desirous of setting out the trusts upon which the same is held by them." The Trusts then declared by clauses 1 and 2 were for the claimant until she should attain 25 years, and thereafter for the claimant absolutely, but with a gift over in the event of the claimant dying under the age of 25 for Mr Iles and the defendant absolutely. The trusts therefore differed from those declared in the 1983 Declaration of Trust, in particular by providing for the claimant to become absolutely entitled at the age of 25 rather than at 21 years of age. 22. Unfortunately, no copy of the Schedule referred to in the 1992 Declaration of Trust has ever been found, and it is by no means certain that such a schedule was ever prepared. For reasons which follow I consider that it matters not whether the Schedule was ever prepared or incorporated in the 1992 Declaration of Trust. The effect of the 1992 Deed of Exchange (applied to the holdings arising from the 1983 Transfer and the 1989 Deed of Exchange was as follows (ignoring for the moment the 1992 Declaration of Trust): a) b) c) The whole of the Disputed Land was held by Mr Iles and the defendant as trustees. The parts of it consisting of the remnant of the original 1983 Trust Land continued to be held on the trusts of the 1983 Deed of Trust. The parts of it transferred to them by the 1989 Deed of Exchange were also held on the same trusts, having been acquired by then in exchange for parts of the 1983 Trust Land transferred to the Council. d) The Central Part was expressly transferred to them by the 1992 Deed of Exchange as trustees, but on the then unspecified trusts of the then non-existent "Deed of Trust of even date". 23. 24. 25. Once the 1992 Declaration of Trust had been executed and backdated, it plainly supplied the trusts on which (at least) the Central Part was transferred, but they were different from the 1983 trusts. To the extent that the 1992 Declaration of Trust purported to declare different trusts of the rest of the Disputed Land, it

was in my view ineffective. The claimant was only 13 in April 1992. No approval of any variation was sought from the court nor was there any power to re-settle in the 1983 Declaration of Trust. Assuming that there never was any Schedule to the 1992 Declaration of Trust, it is nonetheless perfectly clear from its recitals what was the intended subject matter of the trusts intended to be declared. The only property at the Forge held by Mr Iles and the defendant as trustees as a result of their holdings prior to 1989, the 1989 and 1992 Deeds of Exchange was the Disputed Land, for the reasons which I have fully explained. Accordingly, the Schedule was (even if it had been prepared), just surplusage. It is clear that it would also have identified the Disputed Land. Thus I conclude that, at least from the date of execution of the 1992 Declaration of Trust in late 1992 and until Mr Iles' death, he and the defendant held the Disputed Land on trust for the claimant. In the event the differences between the trusts declared in the 1983 and 1992 Declarations of Trust do not matter, in the light of the relief now sought. 26. By September 1995 Mr Jowett had secured registration of the Disputed Land in Mr Iles' and the defendant's names under a single title DU177201.

27. Mr Iles died on 5 April 2000 after a debilitating illness. He had by then explained to the claimant and various others that he had provided for the claimant by setting aside for her land at the Forge and rents arising from the Forge, be hers at 25. Two tenants at the Forge (Mr Holmes and Mr Hanratty) said so and were not cross-examined. The claimant's half sisters Mrs Coates and Tracy Iles also said so. After cross-examination I accept their evidence on that point. The claimant says she was first told when she was about 12, and that this was repeated on numerous occasions thereafter. I accept the gist of that evidence. I can think of no reason why Mr Iles should have concealed it from her. 28. A central issue in the case is whether Mr Iles told the defendant, his wife, that he had done so and, if he did tell her, just what he explained. The defendant's evidence, consistently and stoutly maintained throughout, is that she did not know until several years after Mr Iles died that any land at the Forge was held on trust for the claimant. Before addressing that issue directly I must conclude my description of the remaining relevant facts.
29. Mr Iles' will (made on 22 December 1999) was as follows. He appointed two partners at Jacksons to be his executors and trustees. He gave to a Christine Walker 4 units at the north-west corner of the Forge and units on the east side of the Forge subject to a right of pre-emption in favour of the claimant. By clause 4 he gave the remaining units at the Forge "of which I shall be seized at the date of my death" upon 30. 31. 32. 33. 34. 35. trust to the defendant for life and thereafter for the claimant absolutely. Finally he gave his residuary estate to the defendant absolutely, with a gift over to the claimant should the defendant predecease him. On its true construction clause 4 of the will referred only to the part of the Forge (not already given to Christine Walker) of which Mr Iles was the beneficial owner. The will did not therefore purport to dispose of the Disputed Land. Nonetheless, the probate department at Jacksons appear to have been woefully ignorant of the conveyancing history of the Forge, which had been mainly handled by Mr Jowett, and assumed that the Disputed Land formed part of his residuary estate. It is clear that Jacksons did not advise the defendant that she should act as a trustee for the claimant in relation to the Disputed Land.

In fact legal title (as trustee) passed to the defendant not as part of Mr Iles' residuary estate, but by survivorship. Soon after Mr Iles' death, and (she said) before reading or learning of the contents of his will, the defendant started collecting the rents payable in respect of parts of the Forge, including the Disputed Land. She has done so ever since, until the rents were placed into an escrow account soon after the notification of this claim in September 2009. The defendant and the claimant remained on good terms as mother and daughter from Mr Iles' death until about 2008. In 2003 the defendant transferred her home (inherited from Mr Iles) to herself and the claimant, by way of tax planning. In 2004, just as she was turning 25, the claimant reminded the defendant that she was, from her 25th birthday, to receive part of the rents from the Forge. The defendant started (just prior to the claimant's birthday) paying her £200 per month out of the rents, saying that this was all that she could afford, and the claimant did not then complain. In 2008, just as the relationship was on the verge of breakdown (for reasons entirely unconnected with these proceedings) the claimant says, and Mr Hawthorne confirms, that she found a copy of the 1992 Declaration of Trust, with a plan attached to it by a paperclip, in a drawer at the family home when looking for family photographs to show her partner. The defendant fiercely denies that any such document, or any photos, were ever in the drawer in question, but I find that the gist of the claimant and Mr Hawthorne's evidence on this point is correct. In December 2008 the claimant consulted Jacksons about her concern that her receipts from her mother were much less than the rents generated from the Disputed Land. Jacksons told her to take independent advice. Through new solicitors she sought an account of those rents from her mother by letter in February 2009, to which the defendant's response was that she was not aware of any entitlement of the claimant to rental income in respect of any property at the Forge or elsewhere, and asking for documentary proof. Having in the meantime obtained a copy of the 1992 Declaration of Trust from Jacksons, the claimant sent it as the basis of her claim by letter to the defendant's solicitors in March 2009. The Defendant's knowledge of the trust of the Disputed Land 36. The defendant's case, and her evidence from start to finish, has been as follows: a) b) c) Prior to 2004 she was wholly ignorant of any rights, whether under a trust or otherwise, enjoyed by the claimant in relation to any part of the Forge. When the claimant informed her just before her 25th birthday that she was thereafter to receive some of the rents from the Forge, the defendant believed her without question, thinking that this was simply Mr Iles' wish, about which she had previously been kept in the dark. Even after 2004 she remained ignorant of any trust or other legal entitlement of the claimant to rents from the Forge until the commencement of this claim. Forcefully and consistently though that evidence was given I have been unable to accept it. In my judgment the defendant knew, before Mr Iles died, that the claimant was to be entitled to part of the rents from the Forge on and from her 25th birthday. I find that she knew that the claimant's entitlement arose under some form of trust, and that the terms of the trust were to be found in the 1992 Declaration of Trust, of which she had a copy. I find nonetheless that she neither knew, nor sought advice so as to ascertain, the precise terms of the trust, still less the precise boundaries of the land (the Disputed Land) to which it related. In particular, I find that she did not know that the trust in favour of her daughter required her to accumulate and pay to

or keep for her daughter rents arising from the Disputed Land before her 25th birthday. All she knew was that, from then on, parts of the rents arising from the Forge which she thought had passed to her on her husband's death were to be paid to her daughter. When the claimant reminded her of her entitlement in 2004, the defendant decided to offer her monthly payments by reference to what she thought she could afford rather than, as she should have done, enquire from legal advisers as to the nature and extent of her daughter's rights. I now set out my reasons for those conclusions. First and foremost, it seems to me very much contrary to the ordinary balance of probabilities that Mr Iles would have concealed from the defendant his longstanding plans to confer a substantial benefit upon their only daughter. Having several children by his previous marriage, I would have thought it extraordinary for him to have concealed from her a determination to provide for their daughter's financial security to a much greater extent than any provision which he appears to have made for his other children. Secondly, concealing that information from the defendant seems to me all the more improbable in the light of the wealth of evidence to the effect that Mr Iles told others the gist of what the claimant was to receive, namely a substantial part of the rents from the Forge once she reached 25. He told at least two of his tenants, at least two of his children by his first marriage, and the claimant herself. In that context I accept her evidence that she was given this information when she was still in her early teens. Those probabilities are reinforced by the evidence of both the claimant and Mrs Shields to the effect that the defendant had herself told each of them about the claimant's entitlement at 25. The claimant said that the defendant was present on the occasion when Mr Iles first gave her that information. Mrs Shields says that the defendant told her about it shortly after Mr Iles' death. 37. 38. 39. 40. 41. 42. A conclusion that the defendant knew the gist of the claimant's entitlement at 25 is also reinforced by the broadly concurrent description which both of them gave of the occasion upon which the claimant reminded the defendant of it shortly before her 25th birthday in 2004. In particular the defendant recalled that the claimant spoke in terms of entitlement. I consider it most improbable that, if this had been the first intimation ever given to the defendant of the claimant's entitlement, she would simply have accepted it without question and started making substantial monthly payments to the claimant, without any attempt to make enquiries or take legal advice. I do not believe that it came to her as a surprise. I also think it probable that, when executing either or both of the 1992 Deed of Exchange and Declaration of Trust the defendant was given some limited understanding that those documents conferred rights on the claimant in relation to the Forge, rather than simply being requested by her husband to sign them, as it were, blind. I have in mind in particular the adamant assertion by the defendant that she only ever met Mr Jowett once, whereas it is plain from the 1992 documents that she saw him both in January when executing the Deed of Exchange and again much later in the year when he witnessed her signature on the Declaration of Trust.

43. More generally, there are a number of respects in which inconsistencies in the defendant's evidence seriously detracts from its reliability. For example, she readily acknowledged that, in 2004, the defendant had spoken of an entitlement to rent from the Forge, whereas she

instructed her solicitors in 2009 to deny any awareness of any entitlement to rental income in relation to the Forge, in response to her daughter's solicitors' letter before action. She was quite unable to explain in cross-examination how that denial came to be made. Secondly, and again in her solicitors' correspondence, she asserted (in January 2010) that her earlier gift of a beneficial half-share in her home to her daughter in 2003 had been in exchange for her daughter's agreement not to press her claim to rents. This of course took place a year before what she described as a previously unknown assertion by the claimant that she had a rent entitlement. In due course, all suggestions that the gift of half the home had anything to do with the trust claim were abandoned. 44. Nonetheless, I do regard it as probable that the defendant neither made any sufficient study of the relevant documents (including the copy of the 1992 Declaration of Trust which she kept at her home after Mr Iles death) nor sought or obtained any explanation of the terms of the trust, so as to have become aware either of the precise quantum of her daughter's rent entitlement, or of any trustee-like obligations upon her prior to her daughter reaching the age of 25. I find that her understanding was limited to the abbreviated explanation given to her by Mr Iles, namely that he had arranged for the claimant to become entitled to some rents from the Forge from the age of 25. This is broadly in accordance with the claimant's own understanding and expectation, and with the gist of what the other witnesses said that they had been told by Mr Iles. The defendant's liability to account 45. No submission was pursued that the claimant had in any way disentitled herself to a full account of rent, either by reference to the receipt of a beneficial half-share in her mother's home, or by her agreement, at least by conduct, to take without complaint the £200 per month which her mother said she could afford in 2004. Nor was any claim seriously made that an action for an account had become statute barred for the plainly correct reason that, save in relation to the £200 per month, the rents from the Disputed Land were proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to her use, within the meaning of section 21(1)(b) of the Limitation Act 1980.

46. Mr Simon Goldberg for the claimant did however sensibly concede that the defendant had a good case for relief under section 61 of the Trustee Act 1925 in relation to the period prior to Mr Iles' death. This was because, as was common ground, the whole of the management and administration of the Forge, including the Disputed Land, was in the hands of Mr Iles, to the exclusion of the defendant, during his lifetime. 47. 48. Relief 49. In my judgment the defendant is liable to account to the claimant for rents received from tenants of the Disputed Land from 2004, when the claimant reached 25 years of age, but is entitled to relief under section 61 in respect of the period between her husband's death and 2004. My reasons are as follows. In relation to the later period, when the defendant acknowledged that she knew of her daughter's entitlement and, as I have found, knew that it arose under a trust, it was incumbent upon her to ascertain, if she did not know, the precise basis of her daughter's entitlement, if necessary by enquiry of what had for many years been the family's solicitors Jacksons, for which purpose it was her duty to show them the copy of the 1992 Declaration of Trust which she had at her home. It was not the act of a reasonable trustee simply to give

her daughter that part of the rent which she thought she could afford. By contrast, during the earlier period, the defendant knew only that her daughter had a forthcoming entitlement on reaching 25. She had been allowed to think that she had inherited the Disputed Land from her late husband as part of his residuary estate, and I am just persuaded that it was not unreasonable for her to do nothing by way of accounting for rents, or by way of enquiring more precisely as to the nature of her daughter's forthcoming entitlement, prior to her daughter reaching 25. That is not to say that it was not her duty to make enquiry but rather that, lulled into a false sense of security by her husband's executors, it was not in the circumstances unreasonable, still less dishonest, to have fallen short of it while her daughter remained aged less than 25. In that context I bear particularly in mind the complete lack of business experience which the defendant had acquired during her marriage with Mr Iles and the absence of any indication to a lay person with that degree of inexperience from reading the 1992 Declaration of Trust (without its Schedule) that she was accountable to her daughter for rent from a defined part of the Forge between 2000 and 2004. It follows from the conclusions which I have reached upon the preliminary issues that the claimant is entitled to a declaration that the Disputed Land is held on trust by the defendant for her absolutely and to an order for its transfer to her. She is also entitled to an account in respect of rents received and receivable by the defendant in respect of the Disputed Land from April 2004 and to payment of the amount in the escrow account into which the rents were, by agreement, paid from or shortly after the commencement of this claim. 50. I will hear submissions upon (1) an appropriate form of order, (2) any application which the claimant wishes to make for an interim payment on account and (3) as to case management directions for the taking of the account.

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