SUPREME COURT OF QUEENSLAND

CITATION:	*Paroz v Paroz & Ors* [2010] QCA 362
PARTIES:	**LESLIE ROLAND PAROZ** (plaintiff/appellant) **v** **IAN LESLIE PAROZ** (first defendant/first respondent) **JENNIFER MARGARET PAROZ** (second defendant/second respondent) **LEWIS MARTIN PAROZ** (third defendant/third respondent) **KAREN ANN PAROZ** (fourth defendant/fourth respondent)
FILE NO/S:	Appeal No 3087 of 2010 SC No 9656 of 2004
DIVISION:	Court of Appeal
PROCEEDINGS:	General Civil Appeal
ORIGINATING COURTS:	Supreme Court at Brisbane
DELIVERED ON:	17 December 2010
DELIVERED AT:	Brisbane
HEARING DATE:	20 September 2010
JUDGES:	Fraser and Chesterman JJA and Jones J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed with costs**
CATCHWORDS:	EQUITY – GENERAL PRINCIPLES – GENERALLY – UNCONSCIONABILITY, UNCONSCIONABLE DEALINGS AND OTHER FORMS OF EQUITABLE FRAUD – SPECIAL DISABILITY – where the appellant claimed that the respondents exploited his special disadvantage by paying him inappropriately low wages for his labour on the family farms – where the primary judge dismissed the appellant's claim and held that the evidence did not establish that he was subject to any special disadvantage, that he appeared capable of making independent decisions, that any disadvantage would not have been evident, and that the respondents had not behaved in an exploitative fashion – where the appellant appealed against the decision of the primary judge to this Court – whether the primary judge erred in relying on or placing undue weight on the appellant's capacity to make independent decisions in concluding that he was not under special disadvantage – whether the primary

judge erred in concluding that the appellant was not under a special disadvantage – whether the primary judge erred in concluding that the respondent's conduct did not constitute exploitation of the appellant's alleged special disadvantage

Allcard v Skinner (1887) 36 Ch D 145; [1886-90] All ER 90, cited
Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd (2003) 214 CLR 51; [2003] HCA 18, discussed
Blomley v Ryan (1956) 99 CLR 362; [1956] HCA 81, cited
Bridgewater v Leahy (1998) 194 CLR 457; [1998] HCA 66, discussed
Browne v Dunn [1894] 6 R 67, applied
Brusewitz v Brown [1923] NZLR 1106, cited
Commercial Bank of Australia Ltd v Amadio (1983) 151 CLR 447; [1983] HCA 14, applied
Flower & Hart v White Industries (Qld) Pty Ltd (1999) 87 FCR 134; [1999] FCA 773, cited
Lopwell Pty Ltd v Clarke & Ors [2009] NSWCA 165, cited
Louth v Diprose (1992) 175 CLR 621; [1992] HCA 61, applied
Paroz v Paroz & Ors [2010] QSC 41, related
White Industries (Qld) Pty Ltd v Flower & Hart (1998) 156 ALR 169; [1998] FCA 806, cited

COUNSEL: P Dunning SC, with N Ferrett, for the appellant
A P Collins for the respondents

SOLICITORS: Hopgood Ganim for the appellant
Ernst and Young for the respondents

[1] **FRASER JA:** Leslie Paroz has appealed against the trial judge's rejection of his claim against his brothers and their wives, Ian and Jennifer Paroz and Lewis and Karen Paroz.

[2] Leslie had worked full time for most of his working life on farms that he, Ian and Lewis owned in a partnership (the "Three-way Partnership"). The farming business was carried on in a different partnership (the "Farming Partnership" or the "Five-way Partnership") which from 1982 also included Jennifer and Karen. Profits and losses in the Three-way Partnership were to be distributed equally amongst the partners. In the Farming Partnership Leslie held a one third interest and each of his four partners held a one sixth interest. Leslie's claim was based upon the principles articulated in *Commercial Bank of Australia Ltd v Amadio*.[1] He claimed that for very many years the respondents exploited his special disadvantage, his strong emotional attachment to and affinity for the farming business and the land upon which it was undertaken, by paying him inappropriately low wages and by taking the benefit of a substantial appreciation in the value of the family farms.

[3] The trial judge held that:

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1 (1983) 151 CLR 447.

(a) The evidence did not establish that at the time of Leslie's decision to continue on the farms for the remuneration he received Leslie was subject to any special disadvantage.[2]

(b) It was likely that Leslie had appeared to his partners to be a "strong-willed person, capable of making independent decisions, and likely to make decisions having regard to his own interests". [3]

(c) If Leslie was in fact at a special disadvantage in relation to his decision to continue to work on the farms, any such disadvantage would not have been at all evident to his partners.[4]

(d) The circumstances known to the respondents did not indicate that Leslie's ability to make a decision in his own interests about continuing to work on the farms was seriously impaired.[5]

(e) Leslie's partners were not likely to have behaved in an exploitative fashion towards Leslie and they had not in fact done so.[6]

[4] The trial judge also adverted to difficulties in granting the claimed remedies of a constructive trust or equitable compensation. It was always intended that the partners would retain their interests in the farming properties, which were progressively acquired through the life of the partnership[7] and there were problems in measuring Leslie's claim for equitable compensation.[8] However the trial judge did not find it necessary to reach any final conclusion about what, if any, remedy would have been available had Leslie's claim succeeded. The trial judge also did not find it necessary to rule upon the respondents' argument that Leslie's claim should in any event be refused because of his delay in seeking relief when his partners had long conducted their affairs and made contributions to the partnership on the basis that the arrangement would continue.[9]

[5] Leslie disclaimed any challenge to the trial judge's findings of fact insofar as those findings were influenced by the trial judge's resolution of conflicts in the evidence and the credibility of witnesses. The appeal was confined to challenges to conclusions the trial judge drew or should have drawn from undisputed facts and uncontentious evidence. Leslie emphasised his arguments that the trial judge erred in failing to infer that Leslie's partners kept his wages low, except where it suited one of his brothers to increase his wages for a short time, and in treating the evidence of Leslie's capacity to make independent decisions in other areas as demonstrating that he had the capacity to make decisions in his own interests about continuing to work on the farms.

Background

[6] There was no challenge to the trial judge's overview of the relevant background:

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2 *Paroz v Paroz & Ors* [2010] QSC 41 at [117].
3 *Paroz v Paroz & Ors* [2010] QSC 41 at [122].
4 *Paroz v Paroz & Ors* [2010] QSC 41 at [122].
5 *Paroz v Paroz & Ors* [2010] QSC 41 at [129].
6 *Paroz v Paroz & Ors* [2010] QSC 41 at [125] to [126].
7 *Paroz v Paroz & Ors* [2010] QSC 41 at [131] to [132].
8 *Paroz v Paroz & Ors* [2010] QSC 41 at [138].
9 *Paroz v Paroz & Ors* [2010] QSC 41 at [138] to [139].

"[11] Ian was born on 22 September 1950. Leslie and Lewis are twins, born on 23 December 1952. In the later years of primary school, and throughout high school, all three worked on the farms, before and after school hours and on most weekends.

[12] In the early years, Mr Paroz Senior owned three farms, Berne Farm, Jimmy Stone's Farm and Klibbie's Farm (together the *Home Farms*). In 1966 Mr Paroz Senior and Olive acquired a farm near Hattonvale (*Hattonvale*), and in February 1969 they acquired a farm located on Laidley-Plainland Road (*Plainland Road*).

[13] Ian completed school in 1967. Mr Paroz Senior arranged for him to work in the Laidley branch office of the Commonwealth Bank of Australia.

[14] Leslie and Lewis completed their schooling in 1968. As with Ian, Mr Paroz Senior encouraged Lewis to seek employment off the farm, resulting in Lewis being employed in Brisbane in the Queensland Public Service, with the Irrigation and Water Supply Commission. Mr Paroz Senior also recommended that Leslie take on a plumbing apprenticeship, but Leslie preferred to work on the farms.

[15] Mr Paroz Senior encouraged his three sons to obtain off-farm employment, because the farms would not generate sufficient income to support them and their anticipated families; and income earned from such employment could be used to acquire additional farms, enabling all three of the sons to return to full-time farming later in life.

[16] In 1969, the three sons opened a joint bank account with the Commonwealth Bank at Laidley. Money from this account was used to repay borrowings made for the purchase of Plainland Road. That seemed to reflect the advice of Mr Paroz Senior, it being intended that Plainland Road would be transferred to the three sons. The transfer occurred in 1971. Hattonvale was also transferred to them in 1973.

[17] In 1973, the three sons opened a cheque account, used as a general fund trading account until 1979.

[18] Ian worked at the Laidley branch of the Commonwealth Bank in 1968 and 1969. From late 1969 he worked for 12 months as a relieving officer in southern and southwest Queensland. In November 1970, he was transferred to Papua New Guinea, working there for about two years. Throughout this period he worked, when he could, on the farms, though when he was living in New Guinea, this was restricted to his annual leave.

[19] On his return from New Guinea, Ian worked in Dalby. He used to come home to the farms every couple of weekends

initially, relying on public transport; and then from 1973 more frequently, having purchased a car. He would work on the farms when he could do so.

[20] In this period, including his time in New Guinea, Ian arranged his annual leave to coincide with busy times on the farms.

[21] Ian and Jenny married in 1975. Ian was transferred to the Laidley branch of the Commonwealth Bank about this time, and he and Jenny lived at Plainland Road. He was subsequently transferred to the Gatton Branch of the Bank. He remained there until 1993, when he was transferred to Toowoomba. He has lived at Plainland Road since 1975, and has, throughout the life of the partnership, worked on the farms before leaving in the morning to go to work at the Bank, and on returning home in the evening; as well as on weekends, and regularly during holidays. Indeed, with few limited exceptions, holidays have been spent working on the farms.

[22] After finishing school, Leslie continued to live on the farms, and to work with his father. They had disputes, resulting in his leaving the farms and going to work at Monto in 1971 for a period of about 12 months. At his mother's request, he returned to the farms in 1972. Subsequently, he continued to work on the farms with his father, but did some off-farm contracting work from time to time until about 1980. He then continued to work on the farms on behalf of the Farming Partnership, with some limited off-farm work, done generally on its behalf, until after the present dispute arose.

[23] Lewis lived in Brisbane, as a result of his employment, from 1969. However, he returned to the farms on weekends and holidays, working there when he did so. He and Karen married on 24 August 1981.

[24] In 1979, the sons purchased a farming property (*McLean's Farm*) at Mutdapilly, some 25 km to the south of the farms already owned by the family. This property had the advantage of the right to draw water from Warrill Creek. It was purchased for the sum of $90,000, of which $30,000 was provided by Mr Paroz Senior and Olive; $30,000 was funded by a loan from the Commonwealth Bank; $10,000 was provided by Leslie; $10,000 was provided by Ian and Jenny; and $10,000 was provided by way of a bridging loan, to be repaid from the proceeds of the sale of Lewis's house in Brisbane.

[25] At this time, there was some discussion amongst the family members relating to the purchase of McLean's Farm, and the extent to which the three sons would work on the farms, which will be referred to in more detail later.

[26] With the benefit of irrigation, operations on McLean's Farm were initially very successful, resulting in a cash surplus. This was used to purchase the adjoining property (*Berry's Farm*). Berry's Farm was purchased in two stages, in 1981, and 1983.

[27] The three sons executed a Deed of Partnership for the Land Partnership on 24 August 1981.

[28] The members of the Farming Partnership executed a Deed of Partnership dated 15 July 1981. Leslie says that this deed was executed much later, after April 1992 (when Mr Paroz Senior died). However, the other four partners all state that it was executed on about the date which it bears. While this matter is not of much significance for the claim, I accept their evidence. It is supported by the evidence of Mr Peter Hooper, the solicitor who prepared the deed; by the date stamp on it which appears to be that of the Stamp Duties Office; and by the date of Mr Hooper's invoice for the preparation and stamping of the two deeds. It is also supported by the fact that, in this deed, Karen was referred to by her maiden name. She and Lewis were married in the following month, August 1981.

[29] In 1984, Lewis and Karen constructed a new home on Berry's Farm. They have resided there since that time.

[30] In 1985, the Home Farms were transferred to the three sons. A document was prepared recording the right of Mr Paroz Senior and Olive to live there for the rest of their lives.

[31] Although the Farming Partnership Deed was not signed until 1981, Leslie was paid wages by a partnership (probably constituted by the three brothers) from about March 1980. In the 1980 financial year he was paid $5,000 (although the first payment of $1,500 was made in March 1980, the total for the year seems to include payments for a period prior to March), and he was also paid $5,000 in the 1981 financial year. In the 1982 financial year this increased to $7,500. In the 1983 financial year he was paid $500 on an approximately monthly basis, with an additional $3,000 bonus at the end of the financial year. The same happened for 1984; and again for 1985, save that the bonus was $6,000. He continued to be paid in this fashion in subsequent years, with the bonuses varying between $2,000 and $9,000, until 1988. For a relatively short time the payments were recorded in a cash book as wages, but later were recorded as drawings.

[32] In July 1988 the payments increased to $1,000 a month; and in February 1989 to $1,500 per month. The payments remained at this level until February 2003, though there

were some fluctuations around the end of 1999 and the beginning of 2000. From March 2003 the payments were increased to $2,000 a month (which included a GST component of approximately $182), this rate continuing until 8 December 2006, when payments to Leslie ceased.

[33] In the meantime, in 1989, the three sons purchased another property (*Hiddenvale*). The purchase was financed by a loan of $250,000. Cattle and a horse on the property were purchased for $18,500. Funds were provided by members of the Farming Partnership, Ian and Jenny providing $25,000, Leslie providing $25,000, and Lewis and Karen $20,000. This property was essentially a grazing property.

[34] A lengthy and severe period of drought commenced in about 1990, with 2002 being the year when the drought most severely affected the farming enterprise. The drought came to an end in about 2003.

[35] In about 1989, Lewis ceased to work for the Irrigation and Water Supply Commission, and commenced to work on the farms. He received the same payments as Leslie. With the advent of the drought, the farms, even with the inclusion of Hattonvale, did not produce enough income to support payments to both of them. In 1992, Lewis decided to seek off-farm employment. Initially, he obtained contract work. There was evidence that he did not take payments from the Farming Partnership for the days on which he performed such work. There was other evidence that his wages from the partnership were reduced by the amount he earned from other work. In either case, it seems that the amounts he was paid in this period for working on the farm during normal working hours were similar to the amounts paid to Leslie. Lewis subsequently obtained regular employment in a meatworks, and ceased to be paid by the Farming Partnership from about June 1992.

[36] From this time onwards, Lewis would work on the farms before and after his off-farm work, and on holidays. In his oral evidence, Leslie seemed reluctant to accept that Lewis did as much work on the farms as Ian did, but Lewis's evidence about this is supported by Ian, and is consistent with the attitude all three brothers seem to have had to farming work. Lewis's interest in farm work is evidenced by his decision to return to work on the farms full-time in 1989. Leslie's view may have resulted from the fact that he was based for much of the time in recent years at the Home Farms; while Lewis lived some distance away at Mutdapilly. I accept the evidence of Lewis and Ian on this issue, and I also accept that with very few exceptions, Lewis's holidays have been spent working on the farms.

[37] From about the early 1970s, Ian had maintained the books for the partnership. He had also maintained books for Leslie.

He advised Leslie to set up a separate account into which to invest surplus cash. He recommended that Leslie contribute to a superannuation fund, and made arrangements for him to do so.

[38] In the latter part of the 1990s, Jenny assisted Ian with the bookkeeping work. From about 2000, Jenny was the person primarily responsible for maintaining the partnership accounts. She continued to keep Leslie's books.

[39] During the drought period in the 1990s, Leslie made decisions about maintaining the stock numbers on the farms, with which the other partners disagreed. Nevertheless, Leslie's view on this matter prevailed.

[40] Prior to 1996 Leslie made an arrangement to lease land from a Mr Simmons in the Rosewood area, on behalf of the Farming Partnership. This was done without consultation with the other partners, though on learning of it, Ian required the lease to be documented.

[41] Prior to 1996, farming had been carried out in the relatively traditional way, whereby paddocks were tilled on several occasions prior to planting. Leslie became interested in "no-till" farming. This means that conventional tilling is not carried out. However, heavier machinery is required for planting, greater use is made of chemicals, and other changes were apparently required as well.[10] About the end of 1996, Leslie purchased a no-till planter in shares with a Mr Nick Catlin. He also purchased a larger tractor, necessary to pull the no-till planter. He made an arrangement with Mr Catlin that he would assist with no-till farming on Mr Catlin's property, and Mr Catlin would assist on the partnership properties. Leslie did not consult with the other partners before making this arrangement. They were unhappy with it. The arrangement extended to Mr Catlin receiving a share of the proceeds of the sale of crops, including those grown on partnership lands, and there was unhappiness amongst the other partners based on his alleged failure to pay his share of costs associated with the production of the crops. There was also unhappiness attributed to the fact Leslie was working on Mr Catlin's property, but Mr Catlin was thought not to carry out his obligation to work on the Paroz farms. The arrangement was brought to an end by Lewis in 2000.

[42] At some point Leslie purchased a tractor referred to as the 784 tractor, with a forklift, for about $7000. This was done without consultation with the other partners.

[43] In 1999, Jenny arranged for Leslie to sit with her while she wrote up the partnership accounts. She states that she did

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10 Leslie said of the change, "It's new everything, more or less": T-281/55.

this so that he could understand the costs that were being incurred in the partnership. He states that he assisted her by identifying the chemicals which were purchased for particular crops. This continued for some months.

[44] In the early years of the Farming Partnership, the partners provided cash for the partnership operations. There was evidence that these were treated as "contributions" and were regarded as unrecoverable by the partners. Both in the latter part of the 1980s, and throughout the drought, additional funds were provided to the partnership. The funds were advanced by Leslie, Ian and Jenny, and have been recorded in the partnership loan accounts. Generally speaking, at least from 1989, the contributions made by Ian and Jenny matched those made by Leslie. Unlike Leslie, Lewis had a young family, and, unlike Ian, he did not initially have off-farm income, and when after 1992 he worked off-farm, his income was less than Ian's. From about 1990, he and Karen did not match the contributions made by the others. However, they made purchases of farming equipment involving not inconsiderable expenditure. The amount expended is in excess of $40,000. Their purchases included irrigation pipes, which were placed in the soil on the farms at Mutdapilly. They have not claimed credit in the partnership accounts for this expenditure. Currently, there is to the credit of Leslie in the Farming Partnership loan accounts, an amount of $72,000; and in the same accounts there is a sum $84,300 to the credit of Ian and Jenny. There is no amount standing to the credit of Lewis and Karen in those accounts.

[45] In about 2002, Leslie commenced a relationship with Alison van Ansem. Ms van Ansem had two daughters. Ms van Ansem was prepared to spend her own money to build a house on land owned by the partnership. Leslie approached the others about this proposal, and was upset with their apparent reluctance to agree to it.

[46] At about this time, Leslie also became upset with the amount of money he was being paid. On about 12 February 2003, he presented a document (exhibit 21) to the other partners, dealing with the partnership property and the continued operation of the partnership. In it, he sought a weekly wage of $500 together with sick leave and holiday pay. This was to be backdated to a date not specified, but to include an additional 5% "to date for compensation of unpaid wages." This resulted in the increase in his wages to $2000 per month (inclusive of GST). He also sought compensation for the use of his vehicle back to 1986, apparently with 5% interest, or alternatively the purchase of a new Hilux utility in his name. That resulted in a payment, debited to his loan account, of some $17,000 towards the

purchase of a new vehicle; and an increase in the contribution to his fuel costs from 50% to 75%.

[47] At about this time, the family solicitor became involved in attempts to resolve the situation. A meeting was held at his office on 21 June 2003, attended by the members of the Farming Partnership and Ms van Ansem. Extensive notes were produced of the meeting. That meeting, and subsequent meetings and discussions, did not lead to a resolution of the dispute which had arisen.

[48] On 8 December 2006, receivers were appointed to the Farming Partnership. They conducted a sale in March 2007, at which virtually all of the cattle were sold to Leslie. He arranged for the cattle to be returned to the farms, which he continued to use, along with their produce and some partnership property, for his own purposes. He has acknowledged an obligation to account for use of partnership property.

[49] I should add that, while the farm work was generally done by the three brothers, Jenny and Karen have at times done some of this work, principally related to the harvesting of okra; and the picking and packing of mangoes. They also regularly provided Leslie with meals; and they provided him with transport when he worked on other properties, as happened over much of the life of the partnership. I have previously mentioned the work done by Jenny in relation to keeping the partnership accounts.

[50] Neither Ian, Jenny, Lewis nor Karen has received any money from the partnerships by way of distribution. I have mentioned that an amount of $17,000 made available to Leslie in 2002 was debited to his loan account; and I have sought to identify the payments he received in recognition of his greater work on the farms. Otherwise, he received no money by way of distribution from the partnerships. Consolidated financial records prepared for the partnerships by Mr John Thynne, an accountant who gave evidence, indicate not insignificant accumulated losses."

Relevant legal principles

[7] So far as the condition of the person claiming relief is concerned, the trial judge held:[11]

> "(a) It is a condition of the grant of relief that one party to a transaction is at a special disadvantage in relation to the other, in that some condition or circumstance seriously affects the ability of the first party to make a judgment as to his or her own best interests;

[11] *Paroz v Paroz & Ors* [2010] QSC 41 at [74].

(b) It is not sufficient for the party seeking relief simply to establish that the transaction is seriously disadvantageous to that party…"

[8] The trial judge derived proposition (a) from decisions including *Commercial Bank of Australia Ltd v Amadio*[12], *Louth v Diprose*[13] and *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd*.[14] The trial judge's description of the necessary "special disadvantage" as a condition or circumstance that seriously affects the ability of the plaintiff to make a judgment as to his or her own best interests was referrable both to Mason J's formulation in *Amadio*, adopted in *Berbatis*, and to the majority's statement in *Bridgewater v Leahy*[15] that the fact that the uncle had "the capacity… to know what he was doing and to make informed decisions about the disposition of the property" was no answer to the claim; the majority pointed out that equitable principles might be invoked to "set aside a gift where a donor is perfectly competent to understand and intend what he or she did".[16]

[9] The trial judge derived proposition (b) in part from acknowledgments in the authorities that Courts of Equity have never set aside gifts merely upon the ground of "folly, imprudence, or want of foresight on the part of donors"[17] and that, however "improvident, unreasonable, or unjust" a person's bargains or dispositions may be, they are binding unless the person affirmatively proves a recognised invalidating circumstance.[18] Those statements were quoted by Brennan J in *Louth v Diprose*[19] in the course of pointing out limitations upon the equitable doctrine.

[10] The trial judge articulated three further propositions that are relevant in this appeal. No remedy is available unless it is shown that the other party unconscientiously exploited the special disadvantage to which the first party was subjected; unconscientious exploitation occurs, at least in most cases, if a party procures, accepts or retains a benefit, when it is sufficiently evident that the other party is subject to a special disadvantage, to make it unconscientious to retain the benefits; and no remedy is available unless it is shown that (in the case of a transaction) the transaction was the product of unconscientious exploitation by the other party.[20]

[11] The trial judge's reference to it being "sufficiently evident" that the other party is subject to a special disadvantage to make it unconscientious to retain the benefits adopted Deane J's statement in *Louth*[21] that the jurisdiction to relieve against unconscionable dealing extends generally to circumstances in which a party to a transaction is under a special disability in dealing with the other party to the transaction with the consequence that there was an absence of any reasonable

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12 (1983) 151 CLR 447 per Mason J at 461, 462, and per Deane J at 474.

13 (1992) 175 CLR 621 per Brennan J at 626, 628 to 629.

14 (2003) 214 CLR 51 per Gleeson CJ at 62, at [5], 64 at [14], and 65, at [15]; per Gummow and Hayne JJ at 74 at [46], 76 at [55], and 77 at [57], and per Callinan J at 115 at [184]; the primary judge also noted that Kirby J seemed to apply the same tests, though with different results, at 97 to 98, at [115], [117].

15 (1998) 194 CLR 457.

16 *Paroz v Paroz & Ors* [2010] QSC 41 at [60], quoting from *Bridgewater* at [19] and [118], also cited in *Lopwell Pty Ltd v Clarke & Ors* [2009] NSWCA 165 at [44].

17 *Allcard v Skinner* (1887) 36 Ch D 145 at 182 to 183.

18 *Brusewitz v Brown* [1923] NZLR 1106 at 1109.

19 (1992) 175 CLR 621 at 626.

20 *Paroz v Paroz & Ors* [2010] QSC 41 at [74](c), (d), and (e).

21 *Louth v Diprose* (1992) 175 CLR 621 at 637.

degree of equality between them and "that special disability was sufficiently evident to the other party to make it prima facie unfair or "unconscionable" that the other party procure, accept or retain the benefit of, the disadvantaged party's assent". The trial judge observed that this formulation reduced the level of subjectivity involved from that which might be attributed to other authorities.[22]

[12] Leslie's counsel referred to some further authorities but there was no challenge to the trial judge's analysis or conclusions as to the applicable legal principles.

Application of those legal principles

[13] Leslie argued that the trial judge erred in applying those legal principles by treating the issue of special disability separately from the issue of unconscientious retention of benefit, rather than regarding each as aspects of the "concatenation"[23] of matters relevant in the ultimate enquiry whether it was inequitable or unconscientious for the respondents to retain a benefit in the circumstances in which it was acquired or received.[24]

[14] In my respectful opinion the trial judge did not err by first analysing the evidence with reference to the question whether Leslie operated under any relevant disadvantage in making the relevant decisions before turning to the question whether the respondents had exploited any such disadvantage. That was a convenient and logical mode of analysis. The trial judge plainly appreciated that many aspects of the evidence related to both issues and I did not understand Leslie to suggest otherwise. The trial judge applied the legal principles his Honour had articulated and which Leslie did not challenge in this appeal. The trial judge did not misapply those legal principles.

Leslie's wage

[15] The trial judge rejected Leslie's argument that an analysis of the salary paid to him over the years suggested that Leslie's partners had treated him cynically.[25]

[16] From about 1980 to 2006[26] Leslie worked for remuneration which was very much less than that which was earned by employed farm managers in similar farming operations. The evidence upon that topic was given by an accountant, Mr Thynne. He provided a report which compared commercial salaries for employed farm managers with Leslie's remuneration between August 1981 and December 2006. For that period Mr Thynne assessed Leslie's remuneration shortfall before income tax as $609,664 (compared with an employed farm manager with 10 to 20 years' experience with control of assets of $1,000,000) or $933,607 (in a second scenario, compared with a farm manager with 10 to 20 years experience with control of assets

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22 The trial judge at [62] referred to a passage in Brennan J's statement in *Louth* at 630 quoting Kitto J's statement in *Blomley v Ryan* (1956) 99 CLR 362 at 415 ("the other party unconscientiously takes advantage of the opportunity thus placed in his hands") and Dawson J's statement in *Amadio* at 489 ("What is necessary for the application of the principle is exploitation by one party of another's position of disadvantage in such a manner that the former could not in good conscience retain the benefit of the bargain"). The emphasis was that of the trial judge.

23 *Louth v Diprose* (1992) 175 CLR 621 per Brennan J at 626.

24 The Court was referred to *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447 per Mason J (as his Honour then was) at 461 and Dean J at 474.

25 *Paroz v Paroz & Ors* [2010] QSC 41 at [125] to [129].

26 There was no challenge to the trial judge's finding that from 2003 Leslie could not be said to have been suffering from any relevant disadvantage: *Paroz v Paroz & Ors* [2010] QSC 41 at [112].

worth $8,000,000). In the second report Mr Thynne assessed Leslie's claim for interest on his remuneration shortfall before income tax using (a) simple interest at Supreme Court rates (presumably rates specified in Practice Directions) and (b) using the inflationary component of the present value based on changes in the Consumer Price Index for the first scenario as (a) $599,769 and (b) $267,410, and for the second scenario, as (a) $969,914 and (b) $429,463. Leslie relied upon the substantial magnitude of the shortfall and the marked contrast between a commercial salary and what he was paid. For example, in the first scenario, Leslie's gross "entitlement" was $1,052,827, whereas he received only $443,163, producing the shortfall of $609,664 mentioned earlier.

[17] Leslie's remuneration was certainly far less than broadly comparable commercial wages but the trial judge did not find otherwise. Rather the trial judge was not persuaded that this evidence, taken with the other matters upon which Leslie relied, established that there was any relevant disadvantage in Leslie or any exploitation of him by the respondents.

[18] Leslie did not prove that he was unaware of the disparity between his earnings and the earnings of his brothers in their off-farm employment or that he was unaware of the disparity between his earnings and the higher commercial salaries paid to employed farm managers. In this context it is relevant that Leslie was the only one of the three brothers to reject the strategy formulated by their father to obtain the better paid employment which was available outside the farm and only to work on the farms when they were able to, particularly on weekends and holidays.[27] The trial judge took into account that Leslie had decided to forego an opportunity to earn a better income by gaining a trade so that he could continue to work on the farms, as he preferred,[28] that in 1971 Leslie had sufficient independence to leave the farms and work elsewhere for a period of about one year, that when he returned to the farms in 1972 he did some off-farm contracting work from time to time until 1980, and that after 1980 he continued to do some limited off-farm work, generally on behalf of the farming partnership until the present dispute.[29] It was submitted for Leslie that his case was supported by the fact that within a year of his having left the farms in that early period, he returned at his mother's request because his father was ill. However the trial judge was mindful of that and accepted that a sense of duty to his parents played a not insignificant role in his return and his decision to work on the farms in the 1970s.[30] Nevertheless the trial judge did not err in taking this evidence into account.

[19] The trial judge found that the wage Leslie was paid was not intended to reflect the salary for an employed farm manager. From the outset Leslie was one of three partners and held a one third share in the partnership carrying on the farming operation. Each of his partners made unpaid contributions to the work. For most of the relevant period Ian and Lewis worked on the farms in the mornings before going to work, in the evenings when they came home, and on weekends and during holidays; and Jennifer and Karen also made contributions, though significantly less, in the performance of farm work, and Jennifer looked after the bookwork.[31]

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27 *Paroz v Paroz & Ors* [2010] QSC 41 at [77] to [79].
28 *Paroz v Paroz & Ors* [2010] QSC 41 at [94].
29 *Paroz v Paroz & Ors* [2010] QSC 41 at [22], [94].
30 *Paroz v Paroz & Ors* [2010] QSC 41 at [94].
31 *Paroz v Paroz & Ors* [2010] QSC 41 at [101].

[20] Leslie emphasised evidence that demonstrated his full time farm work and substantially less farm work by his partners and he argued that it was illogical to conclude that "improvidence indicating special disadvantage"[32] was discounted merely by the fact that Leslie stood to obtain the same ultimate benefit as his brothers, when they had put in much less effort. That argument assumed rather than established that Leslie's decisions were improvident.

[21] The trial judge analysed the evidence and held that the money paid to Leslie recognised the fact that he was working full time on the farms whereas the unpaid working contributions of the other partners were significantly less. Accordingly Mr Thynne's report, which did not recognise that substantial offsetting allowances would have to be made to recognise the unpaid work-related contributions of the other partners, did not provide an appropriate guide as to the fairness of Leslie's remuneration.[33] It was also necessary to take into account, as the trial judge held,[34] that one third of any benefit that accrued to the Farming Partnership as a result of paying Leslie less than a fair level of remuneration accrued to Leslie as a partner, and that might also be transferred through to the Three-way Partnership in which the substantial assets were accumulated.

[22] The trial judge took those matters into account in concluding that it was difficult to reason that Mr Thynne's evidence justified a conclusion that Leslie had laboured under a serious impairment of his capacity to make a decision in his own interests in relation to continuing to work on the farms.[35] In my respectful opinion that conclusion was correct.

[23] Mr Thynne's evidence did not establish that there was any substantial difference between the value to the partnerships of the shortfall below a commercial wage for Leslie's full time farm work and the value to the partnerships of the respondents' unpaid part time farm work. That evidence could not establish that there was such a large difference that the trial judge must have been mistaken in rejecting Leslie's claim that he suffered from a disadvantage in dealing with the respondents or that the respondents unconscientiously exploited any such disadvantage, particularly when it is borne in mind that the trial judge's findings were influenced by his Honour's assessment of Leslie as having a relatively strong personality, that he was not unintelligent, and that there was nothing to suggest that his capacity to make a judgement in his own interests was seriously impaired.[36]

Inferences from the timing of increases in Leslie's wages

[24] Leslie argued that the evidence of periods when his remuneration remained static and the timing of increases demonstrated that each respondent possessed, and knew that they possessed, complete dominion over him until he began considering and acting upon his own interests after he started a relationship with Ms van Ansem in about 2002. Leslie relied upon evidence that when the partnership was formed at the beginning of the 1980s the partners resolved that Leslie would be the full time employee and should be paid about the same wage that Lewis and Ian were earning in their separate off-farm jobs. There was no issue on the pleadings that between 1983 and 1988 Leslie was paid a wage of $500 a month. Leslie argued that it was

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32 Appellant's outline of argument, filed 6 July 2010, at paragraph [50].
33 *Paroz v Paroz & Ors* [2010] QSC 41 at [102].
34 *Paroz v Paroz & Ors* [2010] QSC 41 at [103].
35 *Paroz v Paroz & Ors* [2010] QSC 41 at [104] to [105].
36 *Paroz v Paroz & Ors* [2010] QSC 41 at [113].

significant that for at least six years between 1983 and about mid 1988 Leslie's pay remained static, even though this was a profitable period before the drought, whilst Lewis' and Ian's pay in their off-farm jobs increased; that Leslie's pay increased in about 1989 to $1,500 per month when Lewis then commenced to work on the farm and required that level of remuneration; and that after Lewis returned to off-farm employment in 1992 Leslie's wages remained static until 2003. Leslie argued that his wage was increased in 1989 merely to allow Lewis to work at the farms for wages comparable to those he and Ian were then receiving in their off-farm employment, regardless of the previous necessity to increase Leslie's monthly wage threefold to reintroduce the parity originally agreed upon but since abandoned.

Leslie's starting wage

[25] Leslie argued that he had no say in the wage that was set in 1979. The trial judge did not accept that argument. The trial judge accepted Ian's evidence, and substantially similar evidence given by Lewis and Jennifer, that Leslie participated in the discussions which led to the purchase of McLean's farm in 1979 and the decision made during those discussions to pay Leslie the wage he was ultimately paid.[37] The trial judge found that there was significant discussion with Leslie about that purchase, which required a significant financial contribution by him ($10,000) and the assumption by the three brothers of a liability of $30,000 to be repaid over a 15 year period.[38] Ian gave advice (which was not said to be inaccurate) about the financial considerations relevant to the purchase of McLean's farm and discussed with Leslie the decision that he should be paid a wage.[39] Leslie was prepared to forego an opportunity to earn a better income by gaining a trade, so that he could continue to work on the farms (in which he had a significant personal interest, increasing through the 1980s).[40] Although Leslie's income was modest it was regular, relatively certain and, as things turned out, able to be maintained through droughts in the 1980s and the long drought from about 1992 to 2003.[41] The arrangements made at about the time of the purchase of McLean's farm provided Leslie with a home and enabled him to continue in partnerships which had the capacity to buy more land, resulting in the purchases of Berry's farm (in 1981 and 1983) and Hiddenvale (in 1989).[42]

[26] Those findings were justified by the evidence to which the trial judge adverted. The trial judge was entitled to reject Leslie's case that he had no say in the level of his wage and his Honour was not bound to infer from the low level of that wage that Leslie agreed to it because he laboured under any disadvantage arising from his emotional commitment to the family business and farming lands.

The 1989 increase in Leslie's wage

[27] The respondents' counsel objected to the argument that there was an opportunistic threefold increase in Leslie's wage on the ground that it was not put in cross examination of any of the respondents' witnesses. Leslie's senior counsel argued that there was no unfairness because notice of the argument was given in the pleadings and in the evidence adduced for Leslie which proved the figures. The rule

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37 *Paroz v Paroz & Ors* [2010] QSC 41 at [80] to [82].
38 *Paroz v Paroz & Ors* [2010] QSC 41 at [83].
39 *Paroz v Paroz & Ors* [2010] QSC 41 at [85].
40 *Paroz v Paroz & Ors* [2010] QSC 41 at [94].
41 *Paroz v Paroz & Ors* [2010] QSC 41 at [97].
42 *Paroz v Paroz & Ors* [2010] QSC 41 at [26], [97].

in *Browne v Dunn*[43] relevantly requires that a witness be put on notice that a statement made by the witness may be used against the witness, or that an adverse inference may be drawn against the witness, or that adverse comment may be made about the witness. It is a rule of fairness designed to allow the witness the opportunity of responding and giving an explanation. In some circumstances the rule of fairness may be met by notice given during the proceedings that certain matters will be relied upon to contradict that witness's evidence, without subsequently putting that to the witness: see, for example, *White Industries (Qld) Pty Ltd v Flower & Hart*[44] and *Flower & Hart v White Industries (Qld) Pty Ltd*.[45]

[28] The respondents had an opportunity to deal with the pleaded issues in their affidavits, in the cross examination of Leslie, and in the respondents' oral evidence in chief. In fact they successfully met the pleaded issues. I am inclined to think that sufficient notice to satisfy the rule of fairness was given in the pleadings and in the evidence adduced for Leslie, but in any event I would reject Leslie's argument on the merits.

[29] I understood senior counsel for Leslie during the course of oral argument to disclaim any challenge to the trial judge's analysis of the evidence about the increase.[46] Leslie was paid $5,000 in 1980 and 1981, $7,500 in 1982, about $500 per month with an additional $3,000 bonus (thus about $9,000) in 1983 and 1984, and about $500 a month with a bonus of $6,000 (thus about $12,000) in 1985; he was paid in a similar fashion in subsequent years with bonuses varying between $2,000 and $9,000 until 1988, when his salary increased to $1,000 a month. On the trial judge's findings, supported by the evidence, Leslie's remuneration increased significantly before it was decided that Lewis would start full time work on the farm.

[30] There is then Leslie's own evidence that he had a significant involvement in the decision to purchase Berry's farm. The trial judge reached a similar conclusion about the decisions to purchase McLean's farm and Hiddenvale and the decision that Lewis would return to work on the farms at about the time Hiddenvale was purchased for a wage which generally matched that paid to Leslie (though without any payment to Lewis in respect of his vehicle).[47] The evidence which justified the findings included Lewis' evidence that he had been working at the Irrigation Board for some 20 years and he, and Ian who was working at a bank, were earning a wage which was not much less than $1,500; that Lewis, Ian and Leslie ascertained that farm workers were generally then being paid about $1,500 and decided that was reasonable; and that when Lewis commenced work that resulted in an increase in Leslie's wage from about $1,300 to $1,500.

[31] The reference to $1,300 may be reconcilable with the trial judge's findings mentioned in the preceding paragraph when bonuses are taken into account, but whether or not Lewis's recollection was correct in that respect is not significant. The fact that the partners had not increased Leslie's wage to $1,500 before Leslie embarked upon full time farm work falls far short of establishing that Leslie acted under a disadvantage or that this partners exploited that disadvantage. It does not

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43 [1894] 6 R 67.
44 (1998) 156 ALR 169 per Goldberg J at 216 to 221.
45 (1999) 87 FCR 134 per Lee, Hill and Sundberg JJ at 148, [51].
46 *Paroz v Paroz & Ors* [2010] QSC 41 at [31] to [32].
47 *Paroz v Paroz & Ors* [2010] QSC 4 at [108].

justify this Court in holding that the trial judge, who made no error in analysing the evidence on this topic, erred in failing to draw the inferences sought by Leslie.

The absence of an increase in Leslie's wage between 1989 and 2003

[32] Leslie relied upon the evidence that Leslie's wage did not increase between 1989 and 2003. The trial judge accepted that evidence. Leslie referred the Court to evidence that within three years of the 1989 increase in salary, Lewis returned to full time employment off the farm at a wage equivalent to a monthly income of $1,612, whereas Leslie's wage remained constant at $1,500 per month. The inference was submitted to be that Leslie's wage was increased only when that suited one of his brothers, indicating his partners' dominion over him in that respect.

[33] This argument must be assessed in light of the trial judge's findings, which Leslie did not challenge, that the payments in the early years represented an improvement of Leslie's position during a period of expansion of the farming operations and when the amount paid to Leslie reflected the financial capacity of the partnership; Lewis' decision in 1992 to return to off-farm employment was associated with the advent of the drought, after which the farms did not produce enough income to support payments to both Lewis and Leslie;[48] and from about 1989 until about 2002 the partnership was under considerable financial pressure, partly because of the money borrowed to buy Hiddenvale and partly because of the long drought, and the partnership could not have paid significantly more to Leslie in that period.[49] Leslie himself gave evidence there was a severe drought during the 1990s and that "[y]ou were kidding yourself asking for money through the Nineties. We were cash strapped".

[34] Furthermore the trial judge found, and the finding was not challenged, that during that long drought Leslie's partners wanted to reduce the size of the herd by selling off cattle, which would have provided cash and also enabled the sale of hay produced on the farms, thereby avoiding the need to buy additional feed for the remaining cattle. Leslie resisted that plan because he wished to maintain the herd. The trial judge found that this business judgement made by Leslie was accepted, although with apparent reluctance by the other partners.[50] It is true that such decisions could be attributed wholly or in part to a strong emotional attachment to the farms and the business, but that is not necessarily so. It was open to the trial judge to regard the evidence about this decision as support for a conclusion that Leslie, although capable of protecting his own interest in receiving a commercial wage for his full time farming work whilst his brothers earned more in their jobs and made less significant contributions to the enterprise and the farms, preferred a hard-headed business decision in his own interest in the ultimate capital appreciation of the farming enterprise.

[35] Such an interpretation is consistent with the trial judge's rejection of Leslie's explanation in evidence that he continued to work on the farms for $1,500 per month because he thought that if he breached the partnership deed the properties would be sold, that the respondents had that power from 1981, and that "I had to protect my interest, and my interest was those farms".[51] The trial judge examined

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48 *Paroz v Paroz & Ors* [2010] QSC 41 at [35].
49 *Paroz v Paroz & Ors* [2010] QSC 41 at [126].
50 *Paroz v Paroz & Ors* [2010] QSC 41 at [127].
51 *Paroz v Paroz & Ors* [2010] QSC 41 at [89].

the evidence on that topic and held that Leslie's evidence did not in fact reflect what was likely to happen and played no real part in his working full time on the farms for the wages paid to him in the relevant, very lengthy period.[52] Those findings were soundly based in the evidence identified by the trial judge. The contrary was not argued.

[36] When Leslie was asked to explain why the farms were his interests he replied that, "…my Dad gave me the chalice".[53] The trial judge interpreted Leslie's reference to "the chalice" as reflecting the expressed wishes of Mr Paroz Senior that his sons should continue to conduct and expand the family operation, advice that was motivated by what he regarded as the desirable result that the brothers would be able to continue to live as farmers, and in that way provided for themselves and their families financially. The trial judge considered that the advice was given in what Mr Paroz Senior saw as each son's interests and that Leslie's decision to act upon that advice, like the same decisions made by his brothers, was not likely to have been made without sufficient regard to his interests.[54] This evidence about "the chalice" was capable of being regarded as providing support for Leslie's claim, but there is no ground for disregarding the trial judge's analysis of it.

Leslie's wages: conclusion

[37] In the absence of any error in the trial judge's analysis his Honour's findings must be respected.

The change from employment to independent contracting

[38] Leslie argued that he laboured under a serious disadvantage in decisions made by the partners in the circumstances in which he ceased to be an employee and became an independent contractor. Jennifer's evidence was that this decision was made on the advice of an accountant that the most appropriate method of paying Leslie after the introduction of the GST legislation was to employ him as an independent contractor to the Five-way Partnership and that this was discussed with Leslie before it was implemented.[55] Senior counsel for Leslie argued that a consequence of this change was that Leslie became obliged to take out his own worker's compensation insurance and general insurance, thereby reducing Leslie's net income. However it was not submitted for Leslie that the evidence demonstrated that this change resulted in a net disadvantage after taking into account any advantages associated with the contracting regime. That proposition does not seem to have been advanced at the trial. In any event this is a very thin basis for attempting a challenge to the trial judge's findings.

Partnership distribution of profits and losses

[39] For many years Ian did the bookwork required in relation to Leslie's affairs.[56] Initially Ian maintained the books for the partnership, in the latter part of the 1990s Jennifer assisted with the book-keeping, and from about 2000 Jennifer was the person primarily responsible for maintaining the partnership accounts and she continued to keep Leslie's books.[57] Ian signed and apparently reviewed the relevant

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52 *Paroz v Paroz & Ors* [2010] QSC 41 at [93].
53 *Paroz v Paroz & Ors* [2010] QSC 41 at [90].
54 *Paroz v Paroz & Ors* [2010] QSC 41 at [92].
55 Affidavit of Jennifer Margaret Paroz, sworn 12 October 2009, at paragraphs [81] to [87].
56 *Paroz v Paroz & Ors* [2010] QSC 41 at [85].
57 *Paroz v Paroz & Ors* [2010] QSC 41 at [37] to [38].

tax returns. Neither Ian nor Jennifer charged Leslie or either partnership for that work. Leslie argued that the manner in which partnership profits and losses were distributed between 1991 and 2002 was evidence that Leslie suffered a disadvantage in his dealings with the respondents and that they, or at least Ian and Jennifer, unconscientiously exploited that disadvantage.

[40] In addition to contesting the merits of the argument, the respondents objected to it on the ground that the relevant evidence was not put to any of the respondents at trial and they were not given any opportunity to comment upon it. In reply it was submitted for Leslie that there was no infringement of the rule in *Browne v Dunn*[58] because the reference to "issues" and the evidence of the distributions in Mr Thynne's report fairly put the respondents on notice of the relevance of the evidence to the pleaded case that the respondents took unconscientious advantage of Leslie.

[41] The evidence upon which Leslie's argument was based comprised only a short paragraph and an appendix in the accounting report by Mr Thynne. He reported that one of the "issues" was that between 1991 and 2002 Leslie's distribution from the Five-way Partnership was only 20 per cent instead of 33.33 per cent of the partnership profits and losses, as summarised in Appendix 9 of his report. In those years each of the five partners was recorded as having received an equal distribution even though Leslie's distribution should have been twice that of each other partner. Between 1991 and 1999 the records showed partnership losses, with annual distributions to each partner of losses in amounts that varied from year to year from $407 to $12,651. Between 2000 and 2002 the records showed partnership profits, with each partner receiving annual distributions for those three years of $1,841, $2,271 and $2,556 respectively. In 2003, when a much larger profit was recorded as having been made by the Five-way Partnership, Leslie is recorded as having received a profit distribution of $22,311 which, consistently with the partnership arrangements, was twice the amount recorded as having been received by each other partner. The 2003 distribution and those recorded in the following years from 2004 to 2006 accorded with the partnership arrangements.

[42] Leslie's senior counsel informed the Court without contradiction by the respondents' counsel, that the respondents did not address this topic in their affidavits. However, directly relevant evidence was given by Ian and Jennifer during their oral evidence in chief.

[43] Ian gave the following evidence:

> "Just on that, as part of partnership operations, if the partnership on any given year shows a distribution to any of the partners is that something that was physically received?-- No, never.
>
> By you? Sorry?-- Never.
>
> Was there any year where there was a distribution received?-- No.
>
> So, what about on income tax assessment if-----?-- If the partnership showed a profit, for example, and that was the intention all along, that was split one-third to Leslie, one sixth each to Jenny and myself, Lewis and Karen.

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58 [1894] 6 R 67.

But you never received the moneys?-- Never received any moneys.

So, you paid the tax on it notwithstanding, did you?-- Exactly.

Okay?-- Yep."

[44] During the course of Jennifer's evidence in chief, the trial judge pointed out that the figure of $63,000 shown as the Five-way Partnership net loss for 1991 could not be reconciled with the relevant figures on other documents in evidence. Counsel for the respondents observed that what appeared on the partnership return did not appear to have made its way into the same distribution percentages in the personal tax returns. The trial judge then remarked that none of the figures matched. After that exchange, the respondents' counsel submitted that during the 1990s there were trading losses by the partnership which were borne by the partners, "and which perhaps had some taxation advantage particularly - in each of the cases". The evidence in chief was left in that inconclusive state. In cross examination Jennifer was asked to explain a statement in her affidavit that the distributions were simply "on-paper distributions". She responded that after the tax returns had been done for the partnership any profit or loss was distributed, "in accordance with the partnership agreement - a third, a third, a third - being Ian and Lewis' third split between their wives. There was no money ever taken out of the partnership account in any way, shape or form."

[45] The argument for Leslie about the rule in *Browne v Dunn* may have proceeded upon a misapprehension that there was no evidence given for the respondents on this topic. The evidence given by Ian and Jennifer was to the effect that the partnership distributions were intended to accord with the partnership arrangements and that recorded distributions of profits were not in fact paid to the partners. At the trial Leslie's counsel refrained from suggesting that there was any error in that evidence, that the documents summarised by Mr Thynne represented the correct position, or that either witness had consciously participated in a breach of the partnership arrangement. It would be manifestly unfair for the Court now to accept those propositions when they were not put to the witnesses who might have been able to explain the apparent contradiction between the records and their oral evidence.

[46] In any event the trial judge can hardly be criticised for not drawing the conclusions now advocated for Leslie. In addition to the effect of Ian and Jennifer's evidence, Leslie did not secure a finding that he was unaware of the differences between the recorded distributions and the partnership arrangements and this Court was not asked to make such a finding. For all the Court knows the tax returns reflected an arrangement made by and in the interests of each partner. It is also not obvious that the recorded distributions disadvantaged Leslie if, as the evidence suggested, none of the partners in fact drew profits and Leslie had no income against which to offset partnership losses. Further, the trial judge found that Ian was and remained relatively sympathetic to Leslie,[59] that the attitude of all respondents was inconsistent with their having treated him cynically (in relation to his salary),[60] and that each respondent was an honest witness.[61]

[47] This evidence does not support this implicit challenge to the trial judge's favourable findings about the character and conduct of the respondents and their honesty in giving evidence.

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59 *Paroz v Paroz & Ors* [2010] QSC 41 at [85].

60 *Paroz v Paroz & Ors* [2010] QSC 41 at [128].

61 *Paroz v Paroz & Ors* [2010] QSC 41 at [88].

The proposal for Leslie and Ms van Ansem to live on partnership property

[48] Leslie argued that the inference that he was susceptible to being taken advantage of by his brothers should have been drawn from their reaction to his proposal in January 2003 that he and Ms van Ansem build a house for themselves on a partnership farm using Ms van Ansem's money.

[49] According to the affidavit of Jennifer Paroz,[62] Ian responded by pointing out that this involved a decision before the two were engaged, they had only met in September 2002, that Ian and Jennifer had not met Ms van Ansem until early December 2002, and that Ian and Jennifer were concerned that if the relationship did not last some legal difficulties would be created by Ms van Ansem owning the house with the three brothers owning the land upon which it was built. Ian told Leslie that it wasn't a good idea but he would get some advice from the family solicitor. Leslie was unhappy with that response. Subsequently the family solicitor gave advice that problems could arise if Leslie and Ms van Ansem built a house on partnership land using Ms van Ansem's money. Before Jennifer and Ian had the opportunity to speak with Leslie and Ms van Ansem again, Leslie presented a typed list of demands.[63]

[50] Leslie contrasted that response with the partners' acceptance of the conduct of Ian and Jennifer in mid 1975 of moving into a house on partnership property purchased in 1969 (which the brothers had been paying off using vendor finance) and of the conduct of Lewis and Karen of using their own money to build a new house on other partnership property in the early 1980s.

[51] The evidence suggested that Ian and Jennifer were concerned that the relationship between Leslie and Ms van Ansem was a relatively recent one, so that it differed in that respect from Ian and Lewis's conduct in occupying houses on farm lands after each had married, events that had occurred many years before, but whether the reaction to Leslie's proposal was justified is not really to the point. This evidence shed no real light upon the question whether, before Leslie had the benefit of his relationship with Ms van Ansem, he was susceptible to being taken advantage of by his partners or whether they did take advantage of him.

Leslie's capacity to make independent decisions

[52] In the written submissions for Leslie it was contended that the trial judge was mistaken in treating the evidence of Leslie's capacity to make significant decisions in some areas as evidence of his capacity to conserve his own interests in the relevant matters.[64] That proposition was retreated from during oral argument, when I understood senior counsel for Leslie to submit that the findings concerning Leslie's capacity to make independent decisions in a variety of areas were relevant but over-emphasised.

[53] One category of decisions in which Leslie was found to have participated was directly relevant to the disadvantage he alleged. The trial judge found that Leslie participated in many important decisions, specifically including decisions about the wages he was to be paid.[65] That finding involved the rejection of some evidence

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62 Affidavit of Jennifer Margaret Paroz, sworn 12 October 2009, at paragraphs [91] to [95].

63 See *Paroz v Paroz & Ors* [2010] QSC 41 at [46].

64 Appellant's outline of argument, filed 6 July 2010, at paragraph [11].

65 *Paroz v Paroz & Ors* [2010] QSC 41 at [80] to [88].

given by Leslie including, as I have mentioned, his evidence of why he continued to work on the farms for very low wages after 1989. The trial judge accepted that some of Leslie's other decisions were different in character from the decisions in respect of which it was alleged that the respondents had behaved unconscionably.[66] The trial judge also acknowledged that the fact that the decisions were consistent with Leslie's desire to continue farming, whereas the decision to cease working for the partnership might not have been, reduced the significance that otherwise might have been attributed to those decisions.[67] The trial judge's conclusion was that the evidence of Leslie's independent decision-making in other areas remained "of some relevance".[68]

[54] The trial judge therefore acted upon the view of the law advocated for Leslie in this appeal, that a relevant disadvantage might arise only in a particular matter in which that person's interests conflicted with those of the person said to have taken unconscientious advantage.[69] The trial judge did not act on the mistaken view that it was necessary for Leslie to prove that he had degenerated into unquestioning reliance or dependence.[70]

Conclusion

[55] It was agreed at the trial that the pool of assets represented by the farms was ultimately worth between $8,000,000 and $10,000,000. Having regard to the absence of reliable evidence about the relative values to the partnerships of each partner's contributions and Leslie's preference for full time work on the family farms to better paid employment elsewhere, it is by no means clear that his decisions to work for low wages when his partners worked part time for no wages were imprudent. Even if Leslie's decisions were very much against his financial interests and correspondingly to the benefit of the respondents, it does not necessarily follow that he was under any disadvantage, special or otherwise, when dealing with the respondents or that the respondents acted unconscientiously. The trial judge had a marked advantage over this Court in resolving those issues. The trial judge's findings that Leslie was not labouring under any relevant disadvantage at any relevant time, and that any such disadvantage would not in any event have been evident to the respondents, depended in material respects upon the trial judge's assessments of the reliability of evidence given by, and the character and intelligence of, the parties. That creates a significant obstacle in Leslie's attempt to demonstrate that the findings should be displaced.[71]

[56] I am not persuaded that the trial judge made any of the errors contended for on Leslie's behalf.

Proposed order

[57] The appeal should be dismissed with costs.

[58] **CHESTERMAN JA:** I agree with Fraser JA.

[59] **JONES J:** I respectfully agree with the reasons given by Fraser JA and with the order proposed.

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66 *Paroz v Paroz & Ors* [2010] QSC 41 at [110].

67 *Paroz v Paroz & Ors* [2010] QSC 41 at [110] to [111].

68 *Paroz v Paroz & Ors* [2010] QSC 41 at [111].

69 See *Louth v Diprose* (1992) 175 CLR 621 at 639.

70 See *Bridgewater v Leahy* (1998) 194 CLR 457 per Gaudron, Gummow and Kirby JJ at 477, paragraph [70].

71 See *Louth v Diprose* (1992) 175 CLR 621 per Mason CJ at 626, per Brennan J at 633 (agreeing with Deane J), per Deane J at 633, and per Dawson, Gaudron and McHugh JJ at 641.