***Smith and Patrick v Crawshaw* [2019] EWHC 2507 (Ch)**

This case involved a property development partnership which was carried on between the testatrix and the defendant, who was one of her children. It was dissolved by the death of the testatrix, and the executors of her estate subsequently brought a number of claims against the defendant.

The court held, first, that there was only one partnership. There was no evidence of any dissolution of the original partnership after the first development project had been completed, and a number of other projects were carried out subsequently under the provisions of the original agreement. Even after these projects were concluded, the partnership continued to have assets and to be involved in small amounts of economic activity, and the fact that a new agreement was reached was not inconsistent with a continued partnership.

Second, the property in which the testatrix had lived was not a partnership asset but belonged beneficially to her estate. She had originally owned the land on which it was built, but Clause 2(4) of the partnership agreement provided that where partnership capital was real property owned solely by a partner, it must be held on trust by the partner for the benefit of the partnership, and s20 of the Partnership Act 1890 would have had a similar effect had there been no agreement. However, at the time at which the testatrix decided to live in the property, her capital account was debited with £82,500 in respect of it, and the defendant signed the accounts which showed this debit and did not challenge them within the period allowed by the partnership agreement. The court concluded that the property had ceased to be a partnership asset at that time.

Third, the property acquired in the defendant's sole name was a partnership asset and did not belong beneficially to him. The purchase money came from partnership funds and s21 of the Partnership Act provided that unless the contrary intention appeared, property bought with partnership money was deemed to be bought on its account. In fact, the property appeared in the signed partnership accounts as a partnership asset, and its sales figures were included in the partnership accounts.

Fourth, the court held that there had been no agreement to equalise the partners' capital during the existence of the partnership. Since the property acquired in the defendant's sole name belonged to the partnership, there was no need to transfer money to him to compensate him for the proceeds of sale being divided equally between the partners. Further, the payment made to the defendant's ex-wife by the partnership had been debited to his capital account in accounts which he had signed, and there was nothing to show that the testatrix had wished to pay half of this back to him. There was also no evidence that she had wished to compensate him retrospectively for giving up paid employment to work for the partnership. Even if she had, the likely timescale for the partnership business at the time would have been months rather than years, the partnership had no substantial economic activity for much of the previous time, and the defendant's earnings from employment would have been subject to tax. The court also noted that the testatrix's will had left the defendant's share on discretionary trusts to avoid claims from his creditors (including his ex-wife), and this made it unlikely that she would have given him a large sum of capital in his own name. The court further rejected the defendant's claim for restitution for unjust enrichment for his work for the partnership, and for a consequent alteration to the state of the accounts. He had not challenged the accounts within the time allowed by the partnership agreement, and s24(6) of the Partnership Act provided that in the absence of any contrary agreement, no partner was entitled to remuneration for acting in the partnership business. The court rejected the defendant's argument that s24(6) did not exclude the right to restitution for unjust enrichment because in 1890 restitution was based on an implied agreement, on the grounds that there had been no implied agreement on the facts, and in any event the law of unjust enrichment was no longer based on an implied contract. Instead it must be shown that there had been enrichment at the expense of another and that this was unjust, whereas here there was no injustice because the defendant's services were specified in the agreement and had been remunerated by the profit share set out in that agreement.

Finally, the court held that the defendant must repay to the claimants his overpaid or overdrawn entitlements under the partnership. This included the balance in the partnership's bank account which he had spent, and the half of the proceeds of sale of partnership property which he had kept. The sale had made a capital loss and therefore the entirety of the proceeds were an asset of the partnership which fell to be distributed according to s44(b) of the Partnership Act 1890.

***Tarloch Singh Badyal v Malkiat Singh Badyal and others* [2019] EWCA Civ 1644**

This case involved an appeal against the refusal of the High Court to order the winding up under s122(1)(g) of the Insolvency Act 1986 (IA 1986) of a company (the third respondent) which was owned by the appellant, the first and second respondents who were his brothers, and their father. The court had held that it would not be just and equitable to wind this quasi-partnership company up on the grounds of the appellant's exclusion from management because this exclusion was fully justified, principally because of his involvement with a direct competitor of the company.

The Court of Appeal rejected the appeal. First, it held that the High Court's statement that just and equitable winding up was 'exceptional' and 'a last resort' was part of its accurate summary of s125(2) of the Insolvency Act 1986 and the judgment in *Fulham Football Club v Richards* [2012] Ch 33 which had noted that s125(2) provided that the court should not make a winding up order if some other remedy was available and the petitioners were acting unreasonably in pursing winding up rather than the alternative, and that s994 of the Companies Act 2006 allowing relief for unfair prejudice to shareholders would normally provide such an alternative remedy.

Second, it was not just and equitable on the facts to wind up the company. The Court of Appeal noted Lord Lindley's comments in his Treatise on the Law of Partnership cited in *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426, that the court must be satisfied that that it was impossible for the partners to place the confidence in each other which they had a right to expect, and that such impossibility had not been caused by the person seeking to take advantage of it. It also noted the comments of Lord Wilberforce in *Re Westbourne Galleries* [1973] AC 360 that it was not the fact that a particular company was a 'quasi-partnership' or 'in substance a partnership' that allowed the equitable concepts of probity, good faith, and mutual confidence developed in the context of partnership law to be applied, but the statutory 'just and equitable' provision. Further, a breakdown in mutual trust and confidence was only one of the relevant factors referred to by Lord Wilberforce, and probity and good faith were both lacking in the appellant's behaviour. The Court of Appeal emphasised that not every breach of fiduciary duty by a corporator in a quasi-partnership company would automatically render his exclusion from management unfair (*Re Sprintroom Ltd* [2019] EWCA Civ 932), and where a petitioner was solely responsible for a breakdown in confidence because of his own misconduct, he did not qualify for relief.

Third, the Court of Appeal rejected the claim that the High Court had confused two separate jurisdictions under s994 CA 2006 and s122 IA 1986. It had simply extracted principles from parallel jurisdictions which were relevant to the appellant's claim that a breakdown of trust and confidence was sufficient without more to justify a winding up order, and had not treated the two jurisdictions as co-terminous.

Elspeth Berry
Reader in Law, Nottingham Law School, Nottingham Trent University
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