

### ***Deacon v Yaseen* [2020] EWHC 465 (Ch)**

The parties were medical practitioners and former partners in a GP practice. The continuing partner sought to exercise her option under the terms of the partnership agreement to purchase the share of the outgoing partner in the partnership. However, a dispute arose as to how the lease of the partnership premises was to be valued.

That lease contained a rent review clause, but the rent had never actually been increased and the market rent would have been substantially greater. Under the contract between the partnership and the National Health Service (NHS) Commissioning Board for the partnership to supply general medical services, the cost of the lease for the premises from which those services were carried out was reimbursed by the Board to the partnership. The National Health Service (General Medical Services – Premises Costs) Directions 2013 provided that the payment should be either the current market rent or the actual rent, but for reasons which the court was unable to ascertain, the payments in this case had been for the market rent plus the actual rent

The continuing partner was particularly concerned not to overpay for the outgoing partner's share of the premises, particularly if that overpayment was considered to include an element of goodwill, because the sale of goodwill of a medical practice would be unlawful under s259 of, and Schedule 21 to, the National Health Service Act 2006. The court noted the definitions of goodwill provided in *Trego v Hunt* [1896] AC 7:

The whole advantage, whatever it may be, of the reputation and connection of the firm, which may have been built up by years of honest work or gained by lavish expenditure of money

and *Commissioners of Inland Revenue v Miller and Co's Margarine Ltd* [1901] AC 217:

whatever adds value to a business by reason of situation, name and reputation, connection, introduction to old customers, and agreed absence from competition.

However, it held that these definitions had to be considered in the context of the specific contractual and statutory provisions applicable in a particular case. Here, although it was not clear why the payments made by the Board in respect of rent exceeded the limits set out in the Directions, they were clearly made in respect of premises costs, and were not referable to, or variable by reference to, the business success of the practice. They were therefore not goodwill for the purposes of the 2006 Act.

As to what interest the outgoing partner had in the premises, and whether he was entitled to be paid any sum additional to that provided for in the partnership agreement (which was the net value of his share shown in the dissolution accounts), the court considered the judgments in *Sobell v Boston* [1975] 1 WLR 1587, *Brown v Rivlin* (unreported, 1 February 1983), *Popat v Shonchhatra* [1997] 1 WLR 1367, and *Sandhu v Gill* [2006] Ch 456, and concluded that the general position, subject to contrary agreement, was that an outgoing partner was entitled to the value of their share in the partnership, including partnership assets, at the date of departure. The usual remedy to ascertain this value was an inquiry, a valuation, and an account. Once ascertained, this amount became a debt due to the outgoing partner from the continuing partners.

On the facts, the court held that the outgoing partner had failed to demonstrate an agreement contrary to the general law position, and was therefore entitled to a debt rather than a particular asset. The difference between Clause 8 of the partnership agreement, which stated that the partnership property included the lease of the premises, and Clause 10, which stated that partners owned shares in the premises as set out in Schedule 3 to the agreement, which were different still to the shares in the partnership which were as set out in Schedule 2, did not mean that the premises were not a partnership asset. Nor did the fact that partners over the years had mortgaged their shares of the premises, since they retained the equity of redemption to contribute



to the partnership, and this included the vital right to use the premises for business purposes.

Finally, the court noted that both s42(1) of the Partnership Act 1890 and the partnership agreement provided for the outgoing partner's entitlement to be calculated as at the date of departure, with interest payable on profits made after that date from use of the departing partner's capital.

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