

***Burnett v Barker* [2021] EWHC 3332 (Ch)**

This was a judgment on the trial of certain preliminary issues in relation to an alleged partnership dispute. The claimant alleged that she and the defendant had carried on business as partners but that she had given notice of dissolution of the partnership. Her primary claim was for the partnership to be wound up and for accounts and inquiries to be taken. The defendant denied that he carried on the business in partnership with the claimant, and asserted that he was a sole trader.

The court noted that it was agreed that there was nothing in writing and no fixed term, so whether the court could imply a partnership will and, if so, on what terms, was a mixed question of law and fact which depended on the legal principles to be applied and the court's finding of facts on the evidence.

Section 1(1) of the Partnership Act 1890 required three conditions to be satisfied in order for a partnership to exist: a business, carried on in common by two or more persons, with a view of profit. The only dispute here was whether the business was carried on in common by the parties. The court held that this necessarily required there to be a single business and that the parties were carrying it on together for the common benefit and this had impliedly or expressly accepted some level of mutual rights and obligations. It noted that the normal incidents of partnership included mutual agency, participation in profits, sharing of losses, and common capital, although these were not prerequisites.

The court noted that partnership was fundamentally 'a contractual relationship, or a relationship resulting from a contract, whether express or implied, which has been described as a continuing personal as well as commercial relationship'. Thus, like any other contract, its terms must be sufficiently certain, so that the existence of a partnership was unlikely to be inferred from conduct if the alleged partners had reached no binding agreement, or specifically agreed not to enter into a partnership, or one of them had expressly declined to enter into a partnership agreement. As to the distinction between express and implied contracts, the difference was not one of legal effect but simply of the way in which the agreement of the parties was manifested – whether by words or conduct. Contracts were not lightly to be implied, and the court must be able to conclude with confidence both that the parties intended to create contractual relations and that the agreement was to the effect contended for (*Blackpool & Fylde Aero Club Ltd v Blackpool Borough Council* [1990] 1 WLR 1195).

The court noted that the rules in s2 of the Partnership Act for establishing the existence of a partnership merely established the evidential weight to be attached where the facts of a case duplicated those in the section and that the focus must be on the true contract and intention of the parties as appearing from the whole facts of the case.

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