Alnajjar and another v Majeed and another **[2022] EWHC 686 (Ch)**

The claimants and first defendant had been in business together. The claimants provided capital and the defendant had identified properties for purchase, development and letting, arranged the refinance of partnership properties, and assessed the rental income. As a result of breaches of planning law by the defendant, the first claimant been given notice of criminal proceedings.

The parties disputed whether there had been a partnership between them, whether and when it had been dissolved, whether certain companies were assets of the partnership, and the impact of the first defendant's failure to account faithfully as to his dealings with partnership properties.

The court held that there was a partnership between the parties and that the evidence was that it was on the basis of equal shares of profits and capital. It also held that a dissolution of a partnership at will could be inferred from circumstances even though no notice to dissolve had been given. On the present facts, it inferred a dissolution from the fact that the current court proceedings had been commenced by two partners against the third partner, alleging a wholesale breach of partnership duties and claiming an account, which the court considered to be conclusive of the existence of a quarrel.

The court decided to treat the trial of a partnership dispute as the taking of the account of the partnership, given the 'peculiar circumstances of the dissolution' and the fact that the defendants had previously been debarred by the court from participating in the trial because of the first defendant's failure to account. It accepted the claimants' 'sensible' arguments as to the basis for valuing the capital accounts, rental income and return on capital, given the defendants' failure to account and their consequent debarment from the proceedings, and that an inference could be drawn against a delinquent partner in such circumstances (*Walmsley v Walmsley* (1846) 3 Jo & Lat 556). The court also ordered a sale of the partnership properties, the conduct of the sale to be overseen by a Master.

In relation to the dispute as to whether certain companies were partnership property, the court held that they were. Relevant factors variously included:

i) the absence of any agreement for the first disputed company to be held as a personal asset, and the contribution of large sums to the partnership assets at the time it was established;
ii) the fact that even if the ownership of the second disputed company, which was agreed to have originally been a partnership asset, had been transferred to the defendant, the beneficial interest would have remained with the partnership, given that no consideration had been provided, the asset had clearly been treated as an asset of the partnership, and there had been no agreement to the contrary; and
iii) the fact that the shares in a third disputed company had been owned by an admitted partnership company, and then transferred to the second disputed company which the court had concluded to be a partnership asset.

Brake and others v Cheddington Court Estate Ltd **[2022] EWHC 366 (Ch)**

This judgment is one of several recently given in a long running dispute (and an earlier judgment was reported in A Propos Partnership in July 2020). This particular judgment primarily concerned possession of a property, and includes an interesting section on the ownership and use of partnership property.

The claimants had entered into a partnership with a limited partnership to carry on the business of providing weekend breaks and hosting events. They contributed a cottage as partnership property. After dissolution of the partnership, receivers sold the partnership property to a third party, which was itself bought by the respondent. The claimants were adjudicated bankrupt and the partnership went into administration and then liquidation. The claimants argued that they were entitled to possession of the property, as against the respondent which was in actual possession of it.

The court rejected the claimants' argument that they had the right to possession as licences. It noted that although Clause 8.4 of the partnership agreement purported to entitle them to reside in the property as licensees, a landowner could not give himself or herself a licence to go on to his or her land, and could not give such a licence to himself or herself jointly with another person (*Harrison-Broadly v Smith* [1964] 1 WLR 456). However, what was granted by Clause 8.4 was not actually a licence. A licence was a permission which prevented the act of entering or remaining on the land from being a trespass (*Axnoller Events Ltd v Brake* [2022] EWHC 365 (Ch)), whereas here the three partners and co-owners of the land already had the right to occupy the land and it would not be a trespass for them to do so. It was also not a tenancy, and so ss72 and 82 of the Law of Property Act 1925, and *v Procter* ([2021] EWCA Civ 167) in which the Court of Appeal held that those sections solved all the common law problems of parties granting tenancies to themselves, were irrelevant.

The court also held that even if there had been a licence, it could not have been intended to have effect once the property was sold to a third party and would have ended at that time. In any event, as a matter of land law, a licence would not have given the claimants a superior title for the purpose of recovering possession from a third party who had taken possession.

However, the court held that what Clause 8.4 did do, was to disapply s29(1) of the Partnership Act 1890. Section 29(1) provided that, subject to contrary agreement, a partner must account to the other partners for any benefit derived by him from use of the partnership property, and Clause 8.4 provided express contrary agreement.

The court accepted the claimant's alternative argument, that they had title based on possession in law. They had both the necessary physical control while they had occupied the property, and the requisite intention, in their own name and their own behalf, to exclude others from the property (*Powell v McFarlane* 1979) 38 P&CR 452, as endorsed by the House of Lords in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419). However, the respondent had a better title. It was in actual possession of the property, and had been granted a licence to enter and use it. The licence had been granted by the claimants' trustee in bankruptcy, who had acquired any beneficial rights which had belonged to the claimants, and had entered into a transaction with the partnership liquidators to acquire their rights, with the result that he had the entire beneficial interest in the property. He had then entered into a conditional sale agreement with the respondent whereby he would apply to the court to obtain legal title which he would pass to the respondent together with the beneficial interest. In the meantime, he had given authority to the

respondent to enter and use the property in accordance with a licence which he had executed, and the respondent had done so.

Procter v Procter and others **[2022] EWHC 1202 (Ch)**

An earlier judgment in this dispute was included in the Legal Update for March 2021.

Most of this judgment concerned matters of property law (which will not be discussed here), but it also dealt with the issue of whether a retiring partner was entitled to have her partnership share bought out by the continuing partners, and on what basis.

The court noted that the partnership agreement contained no relevant express provisions on the entitlement of a partner on a technical dissolution. It held (citing *Sobell v Boston* [1975] 1 WLR 1587 and both *Lindley & Banks on Partnership*, para 19-11, and *Partnership Law* by Blackett-Ord and Haren, para 18.34) that in those circumstances, the retiring partner was not entitled to a sale of the partnership assets but to be paid out for his share at a valuation according to accounts and inquiries directed by the court. Sections 42 and 43 of the Partnership Act 1890 therefore applied. (Section 42 provides that an outgoing partner is entitled to the share of profits since the technical dissolution attributable to his share of the partnership assets, or to 5% on that asset share. Section 43 provides that the amount due from continuing partners to an outgoing partner is a debt accruing at the date of dissolution.)

As to the valuation, the court held that the ordinary partnership accounts (as opposed to dissolution accounts) would be inappropriate in valuing a share for this purpose because, for example, assets might be left of the balance sheet or listed at cost (*Ham v Ham* [2013] EWCA Civ 1301). The court also held that the expert valuer should not be directed to value the partnership's agricultural tenancy on the basis that the retiring partner would refuse to alienate the tenancy. There was no expressly agreed covenant against alienation and the retiring partner, as joint tenant, held as trustee for the partnership and was required to act in the best interests of the partnership rather than her own self-interest. Indeed, an earlier order in the proceedings had directed that the tenancy was to be valued on the basis of a freely assignable tenancy.

McKee v McKee **[2022] NICh 6**

The defendant and plaintiff, who were father and son, had been in a farming partnership together. The plaintiff sought an order for dissolution and winding up of the partnership, including a declaration that the farmed lands were partnership property. The defendant argued that the lands remained in the individual registered ownership of the plaintiff and defendant that they had been prior to the commencement of the partnership.

The court held that the onus of proof lay on the party asserting that property was a partnership asset, and that whether or not it was partnership property was a matter of agreement, express or implied. It noted, however, that vagueness in the agreement might negative any contractual intention, and that that was the case here. The court could infer from surrounding circumstances an implied agreement that property had been brought in or acquired as partnership property. However, in the absence of express agreement that the farm would become an asset of the partnership carrying on the farming business, the courts would be reluctant to hold that business efficacy required an implication to that effect (*Ham v Bell* [2016] EWHC 1791). It was a common

arrangement in farming businesses for land-owning partners to make the land available to the partnership without any change in ownership (*Wilde v Wilde* [2018] EWHC 2197), and indeed in partnerships generally, the carrying on of business from certain premises was not enough for the premises to become partnership property; it depended on the agreement of the parties was of overriding importance (*Re Christie* [1917] 1 Irish Reports 17)

The court also held that the treatment or non-treatment of property in the partnership accounts was relevant but not conclusive (*Re Ryan* [1863] 3 Irish Equity Reports 227), *Joyce v Morissey* [1998] TLR 797, *Wilde v Wilde*). Here, the accountant had included in the partnership accounts the lands registered in the individual names of the plaintiff and the defendant, but that had not been requested by either party, and the significance or potential consequences had not been explained to them. The court concluded that '[a] unilateral decision by an accountant to draw accounts in a particular way without explaining what the consequences might be could not create a consensus between the partners where none had previously existed' (*Joyce v Morissey*).

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