Adrian John Gill (as Executor of the Estate of Rosemary Martha Gill) v Malcolm Kirk Gill **[2023] EWHC 641(Ch)**

The defendant had carried on a farming partnership with his mother prior to her death. The majority of this judgment concerned a disputed over final estate accounts, but a short section dealt with partnership issues.
The court noted that the mother's death automatically dissolved the partnership (s33 of the Partnership Act 1890) and that the defendant, as the surviving partner, was responsible for winding up the partnership (s38). Section 43 provided that the amount due to the personal representatives of a deceased partner in respect of that partner's share was a debt accruing at the date of death. Lindley and Banks on Partnership (21st edn) stated that s43 clearly applied where the partnership continued despite the death, but that its application was less clear whether the death brought about a general dissolution (para 26-03). However, the surviving partner here had continued the business rather than winding it up, and so this had the effect of crystallising the statutory debt owed by him to his mother's estate. The debt was to be calculated by reference to the value of her interest in the partnership at that date.

Malik v Hussain and others **[2023] EWCA Civ 2**

In earlier judgments it had been found that Malik and Hussain had been in partnership together, and that it was just and equitable to make an order for dissolution, winding up, and the taking of a final account. On the taking of an account, the court ordered that the partnership assets be sold, with a buyout of Malik's share by Hussain at a reserve price if the sale process did not result in a sale, and set out a sale mechanism.

Although a buyer was found, and a deposit paid, contracts were not exchanged within the 7 days required by the sale mechanism. Although contracts had been drafted, and the buyer's solicitors had proposed amendments, neither party had executed their parts of the contract, let alone offered to exchange. Malik then made a series of unsuccessful applications to the court attempting to extend the period to allow the sale to take place. During the course of these, it was held that the sale mechanism was a contract between the partners, the property agent who conducted the sale, and the buyer; and a sale to Hussain was ordered.

The court in the current appeal held that Malik and the buyer had a contractual right, pursuant to the court-ordered sale mechanism, to proceed to an exchange of contracts for the sale and purchase of the partnership assets. The sale mechanism required the bidder to exchange within 7 days, but this referred to an obligation to execute and exchange a contract tendered by the other party in a form capable of being executed and exchanged by the bidder. It did not require the bidder to procure the exchange, and it would be bizarre if the draconian provisions that applied if the buyer was in default became operative where the buyer was not at fault. The buyer was therefore not in breach of any obligation, his

deposit was not forfeit, and the contract to sell the partnership assets to him had not become invalid. The court also considered that the failure of the partners and the sale conductor to have agreed draft contracts of sale ready when the deposit was paid, instead of when the deadline for exchange was imminent, breached the implied duty of mutual co-operation.

The court held that since Hussain was one of the contracting parties, he could be required to transfer Malik's share of the partnership assets, which had been sold to him, to the buyer on receipt of the agreed purchase price. The court would have no hesitation in exercising its power to give effect to its previous orders, including the sale mechanism, absent a relevant and serious change of circumstances creating unfairness and undue prejudice, and it held there were no such circumstances. Hussain would receive sale proceeds greater than the amount he had paid, there was no concrete evidence of further losses caused by the delay, and in any event the delay was caused by his own failure to finalise contracts of sale and the resulting thwarting of the court-ordered sale. The court concluded that the buyer should put up the balance of the sale price as a condition of proceeding with the purchase, all parties must finalise the sale contracts within seven days of the funds being lodged, and the buyer must exchange within a further seven days. If he failed to do so, the sale would not proceed and Hussain would retain the partnership assets.

Allianz Global investors GmbH and others v Barclays Bank plc and others **[2023] 1 All ER (Comm) 20**

The claimants were investment funds, some of which were structured as limited partnerships. They brought claims against the defendant banks for the illegal anti-competitive manipulation of foreign exchange markets to the funds' detriment.

The parties agreed that any claim against a third party for damage to a partnership fund was a partnership asset, that only the general partner could bring proceedings against the wrongdoer, and that a limited partner could only bring such proceedings on a derivative basis (*Certain Ltd Partners in Henderson PFI Secondary Fund II LLP (a firm) v Henderson PFI Secondary Fund II LP (a firm)* [2012] EWHC 3259). The court noted that if a limited partner did bring a derivative action, it would lose the protection of limited liability because this would constitute taking part in the management of the partnership business within the meaning of s6(1) of the Limited Partnership Act 1907 (*Henderson*).

The court also noted that where a limited partner had left a continuing partnership, the partnership agreement would usually make provision as to the partner's financial entitlement, and their share should be regarded as a debt with effect from the date on which they ceased to be a partner (*Lindley & Banks on Partnership*, 20th edn 2017, para 19-11).

The court held that since the third parties' duties under competition law were owed to the partnership and not a partner, and the loss was that of the partnership and not separately

of a partner, the limited partner had no cause of action and did not acquire one on redemption.

Price and others v Flitcraft Limited and others **[2022] EWHC 3381 (Pat)**

This case involved a dispute about patents. Although Price was a partner at the time he invented the system which was the subject of the patents, he was registered as sole proprietor of the patents. The partnership consisted of Price, Middleton and a company owned by them both. Price subsequently granted an exclusive licence in respect of the patents to a company owned by him and Middleton. When the partnership encountered financial difficulties, it was granted a loan by one lender secured on the patents, and a loan by a second lender in return for that second lender's acquisition of an interest in the company and in the patents, but not in the partnership. After the partnership went into administration, its assets were acquired by the defendants.

Price and the company alleged that the patents had been infringed by the defendants. The defendants alleged, inter alia, that Price had held the patents on trust for the partnership, and that the partnership assets had vested in them.

The court noted that whether property was partnership property depended on what the partners had agreed and, in the absence of express agreement, by reference to:

i) the circumstance of the acquisitive of the asset in question;
ii) the purpose of the acquisition; and
iii) the manner in which the asset had subsequently been dealt with.

The court would not find an implied agreement to treat property as partnership property where that would not accord with the partners' subjective intentions, and the crucial question was whether the asset had been used and treated as a partnership property; mere used by the partnership would not usually be sufficient.

The court held, first, that the fact that Price invented the system at a time at which he was trading through the partnership did not mean that it had to be inferred that the partners had agreed that the partnership owned the patents. Inventors often kept ownership of their inventions away from the firms exploiting those inventions, not least because of the risk that those firms might fail (as the partnership had here). The application to register was made in Price's name and both Price and Middleton believed that the patents were owned by Price personally, as did the second lender.

Second, the fact that the inventions were used only by the partnership added little to the first point. Mere use of property was usually insufficient to raise an inference that that the partners intended the property to owned by the partnership, and on the facts it seemed more likely that they had envisaged that the partnership merely had a licence to use them.

The argument was also difficult to reconcile with the exclusive licence granted to the company, or with the agreement with the second lender.

Third, although the patents were used as security for the partnership debt to the first lender, it was frequently the case that an individual partner's property was used as security for partnership debts, and it did not follow that the partners must be taken to have agreed that the property was partnership property. Indeed, security had also been granted over Price's other personal property.

Fourth, although s21 of the Partnership Act provided that property bought with partnership money was deemed to belong to the partnership unless the contrary intention appeared, and the partnership had met various costs associated with the patents and had not paid Price any royalties for its use of the patents, the court was satisfied that the partners did not intend the patents to be partnership property. Indeed it could be argued that the reason why no royalties were paid by the partnership was because it had paid other costs, and vice versa.

Fifth, neither Price nor Middleton had said anything that amounted to a clear statement or acceptance that the patents had been held on trust for the partnership. That would also have been inconsistent with the partners' conduct, including their dealings with the second lender. Although the insolvency practitioner gave evidence that he was told by Price and Middleton that the patents were held on behalf of the partnership, that did not seem to have been his view at the time. Indeed, his application as Price's trustee in bankruptcy to set aside Price's alleged assignment of the patents made no mention of the patents being held on trust for the partnership, and the application would have pointless had that been so.

The court concluded that the partnership had not owned the patent, but used the invention under a licence, initially an informal one from Price and subsequently a sublicence from the exclusive licensee.

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