***Bahia v Sidhu* [2024] EWCA Civ 605**

In *Bahia v Sidhu* [2020] EWHC 875 (Ch) the defendants were§ ordered to restore monies to the partnership in circumstances where there had been a failure to account for money that should have been properly received by the partnership, and where the defendants had taken benefits from the partnership. The sums remained unpaid, and the claimant successfully sought a transfer of partnership property to him in payment of the sums ([2023] EWHC 3028 (Ch), noted in the APP Legal Updates for December 2023). The court exercised its discretion under *Syers v Syers* [1876] 1 AC 174 to depart, in the interests of justice, from the usual order for sale. In reaching this decision, it took particular account of the fact that the claimant, as the injured party, should not be kept out of receiving value from the partnership longer than was necessary; the wishes of the claimant as sole remaining former partner of the partnership; and the avoidance of the costs of an auction.

The Court of Appeal allowed the defendant's appeal. It noted that although there was no absolute rule that partnership assets be sold upon dissolution, it was the normal and best means of ascertaining the value of the assets and, if a partner wished to purchase any of the assets, it ensured they paid a fair price. The court acknowledged that in some cases an open market sale would not be the best means of achieving full value, or would be unfair, but held that its review of the caselaw indicated that there were very few examples of such exceptional cases.

In *Syers v Syers*, the court had exercised the discretion because a sale would be an undesirable way of ascertaining the value of a partner who only owned one-eighth of the partnership when the other owned seven-eighths. However, the court in *Bahia* noted that this also best reflected what the partners had intended.

In *Hammond v Brearley* (unreported) [1992] 12 WLUK 185, the exceptional feature was that the partner making the claim to wind up the partnership had no interest in the goodwill of the business, but only a share in minor assets which had little value when detached from the business as a going concern. He was therefore unlikely to do better and could well do worse by sharing the proceeds of sale, than by receiving his share of a valuation in which the position of the other partners as special purchasers could be taken into account. An acution sale of the assets would also be disruptive to the business and damage its reputation. However, the court in *Bahia* noted that, strictly, this was an interlocutory appeal in which the court set aside an interim order for sale, and merely envisaged that the trial judge might exercise the *Syers* discretion.

In *Mullins v Laughton* [2003] Ch 250, the departing partner had a relatively small stake in the business (in which there were 13 other partners); and a sale of the business would be uncertain and difficult for a professional insolvency practice with offices in different cities, and would have an adverse impact on employees, creditors, and insolvent persons under the insolvencies for which the partners were responsible. However, the court in *Bahia* noted that this case could also be regarded as one of giving effect to the intention of the partners as to what should happen on dissolution, rather than of exercising the *Syers* discretion.

In *Malik v Mahboob Hussain Junior and others* [2021] EWHC 1405 the court noted that an order for buyout instead of a public sale would be rare, but might be justified where the only aim of the objecting partner was to increase the price by engaging in a bidding war with no intention or ability to purchase. As the court in *Bahia* noted, however, the court in this case ordered a sale, rather than exercising the *Syers* discretion.

Similarly, in *Benge v Benge* and another [2017] EWHC 2124 (Ch), the court refused to exercise the *Syers* discretion, but noted that it might be exercised if one of the partners was running the business and wished to continue to use the relevant assets, and the court was 'very certain as regards what would be a fair value' so that the selling partner did not lose out financially.

The court in *Bahia* summarised the principles to be derived from these cases as follows (para 44):

> Drawing all those threads together, it seems to me that the types of case in which "exceptional circumstances" have been found to exist, or where it has been envisaged there might be justification for departing from the general practice of ordering a sale, are: (i) where one partner has a very small stake in the partnership, and selling the partnership business as a going concern would create disproportionate injury to the majority partner(s) and/or to third parties such as customers of the business; (ii) where, as in *Hammond v Brearley*, a sale in the open market is obviously not going to maximise the value of anyone's share in the partnership, because the assets are worth little or nothing if sold separately from the goodwill, and selling both together would be disproportionate; (iii) where, even if its terms were breached, the partnership agreement makes provision for a buy-out on termination of the partnership, or it can properly be inferred that this is what the contracting parties intended, and (iv) (possibly) where it is established that one partner intends to use the auction process to drive up the price artificially, to the detriment of the other partner who wants to buy the property.

The court noted that these were examples of situations in which a sale by auction would not serve the interests of justice, either because it would not maximise the value of the assets, or because it would unduly favour one of the parties or unduly disadvantage the other(s). However, there was no reported authority in which the *Syers* discretion had been exercised or recognised in the normal situation where the assets could be sold in the open market without creating any unfairness and the partners were unable to agree on an alternative.

In *Bahia*, where the property could readily be sold at auction, the court concluded that its value was better measured in that way than by an expert opinion as to what it might have sold for. It rejected the argument that a buyout would save the costs of auction, since if that were a legitimate basis for exercising the discretion, the normal rule would not exist. The court similarly rejected the argument that the delay before an auction could take place justified a buyout, at least absent extreme market volatility or some other special factor which might case the value to drop substantially. The court further held that where one partner had died, as here, the wishes of the surviving partner were not to be given greater weight than those of the personal representatives. Nor could the fact of a judgment debt, regardless of its size and how it arose, be an exception circumstance so as to justify the exercise of the *Syers* discretion. Finally , the court noted that the order for transfer could not be justified when the valuation of the transferred property was £1.9 million in excess of the debt.

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***R (Bhat) v NHS Litigation Authority* [2024] EWHC 375 (Admin)**

The two claimants were the equity partners in a partnership at will providing medical services under the standard NHS England (NHSE) contract. They served notice of

dissolution on the one salaried partner under s26(1) of the Partnership Act 1890, which provides that 'Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention to do so to all the other partners'. Thereafter, they continued to run the practice without her.

NHSE subsequently gave notice to terminate the contract, as a result of which the claimants referred a dispute to the Secretary of State. The Secretary of State appointed the defendant adjudicator, who found that that the expulsion of the salaried partner amounted to a general dissolution under s32(c) of the Partnership Act and that this had terminated the contract, which was then replaced by an implied fixed term contract which had since expired. Section 32(c) provides that 'Subject to any agreement between the partners, a partnership is dissolved - … (c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership'. The claimants sought judicial review of this decision.

The court allowed the claim. It noted (citing *Lindley & Banks on Partnership* paras 24-03 to 24-05) that a change in the composition of a partnership resulted in a dissolution of the existing firm and the creation of a new firm, which would usually take on the assets and liabilities of the old firm without any break in the continuity of the business. This was often referred to as a 'technical' dissolution. In contrast, the term 'general' dissolution denoted a dissolution involving a full scale winding up, and reference to a partnership 'in dissolution' usually indicated that a general dissolution had taken place but that the winding up of its affairs was still continuing. Once that winding up was complete and the accounts settled between the partners there was nothing left which could be properly be referred to as a partnership.

The court held that dissolution was capable of ending a contract between the partnership and a third party (*Brace v Calder* [1895] 2 QB 352 and *Briggs v Oates* [1990] ICR 473). If the contract was only to be performed by the individual partners then a change in the constitution of the firm would render its performance impossible. However, if on a true construction the contract was to be performed by the firm as from time to time constituted, a change in partners would not necessarily terminate the contract.

The court held that the standard NHSE contact provided that it was to subsist and be treated as made with the partnership as it was from time to time constituted. Here, the partnership had not been subject to a general dissolution but only a dissolution on notice in accordance with s26(1), and the medical practice had been continued without interruption by forming a new partnership at will. Therefore the contact continued to subsist and was treated in law as being made between the NHSE and the new partnership carrying on the same practice.

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