***Bhat and Bhat v Patel* [2025] EWHC 2180 (Ch)**

The claimant's husband, Dr Patel, carried on a medical practice and had a contract with the NHS. The freehold premises from which it operated were owned by the claimant and her husband.

In April 2014, the first defendant and a Dr Jagadish began working at the medical centre, and the claimant executed a partnership (the 2014 Partnership) agreement with them (the 2014 Agreement). The NHS contract remained with Dr Patel alone and when he retired in September 2014, the contract was varied so that the NHS service provider became the Sai Medical Centre. As the Centre was not a legal entity, the trial judge found that this meant the partners from time to time. The variation was signed by all three partners.

In March or April 2016, the second defendant was added as a partner (the 2016 Partnership), and all four signed a variation of the NHS contract. In February 2017 Dr Jagadish left, and the remaining three partners signed another variation.

In February 2019, the relationship between the claimant and the defendants broke down. The claimant sought judgment for arrears of an annual payment due to her under the various partnership agreements (the Annual Payment). The trial judge found in favour of the claimant. The defendants appealed.

The court held that any change in the partners would dissolve an existing partnership and create a new partnership (*Hadlee v Commission of Inland Revenue* [1989] NZLR 447 and *Lindley & Banks on Partnership*, para 24-01). This was so whether there was a technical dissolution, where the new firm took on the assets and liabilities of the old firm without any break in the continuity of the business; or a general dissolution, where there was a full scale winding up, leaving nothing which could be referred to as a partnership (*Lindley & Banks on Partnership*, paras 24-03 - 24-05). In either case, the old partnership would be dissolved.

Here, the court held that the parties had agreed to the 2016 Partnership continuing on the terms of the 2014 Agreement with the addition of the second defendant as a new partner and the revision of the profit shares, which did not include any revision of the Claimant's right to the Annual Payment (the 2016 Agreement). In particular, there was no legal requirement that the second defendant had to have read those terms before she could make a legally effective agreement to be bound by them.

The court also rejected the defendants' argument that the 2016 Agreement varied the 2104 Agreement and was invalid because it did not comply with the requirements of Clause 44 the 2014 Agreement as to variation. The 2016 Agreement was a new agreement, albeit almost entirely on the same terms as the 2014 Agreement. The 2016 Agreement had to be a new agreement because the second defendant had not been a partner in the 2014 Partnership and had not been a party to the 2014 Agreement. When she joined in 2016, this

dissolved the 2014 Partnership and the 2014 Agreement ceased to apply. Clause 44 was confined to variation of the 2014 Agreement and could not operate to prevent different parties from agreeing to adopt the terms of the 2014 Agreement as the terms of their new partnership. Although the 2014 Agreement contained provisions which contemplated a change in the partners, they were not capable of changing the legal effect of a new partner joining, namely dissolution of the 2014 Partnership and its replacement by the 2016 Partnership.

Furthermore, the defendants had suggested that if Clause 44 was able to deprive the 2016 Agreement of any effect, the default provisions of the Partnership Act 1890 would apply. The court noted that it would be a bizarre result if these default provisions, which applied 'subject to any agreement', took effect in circumstances where the parties had expressly agreed to terms which were inconsistent with those default provisions.

The court further held that even if Clause 44 did apply to the 2016 Agreement, its first requirement, for variation to be agreed in writing and signed had been satisfied by the notice given to the NHS by the three existing partners on the admission of the second defendant. Although it contained a second requirement, for the variation to take the form of an addendum to the 2014 Agreement, it contained no sanction for failure to comply, unlike the sanctions specified for failing to comply with the first requirement. The court concluded that a variation which satisfied the first requirement was effective even if it did not satisfy the second requirement.

The court also noted that although the departure of Dr Jagadish created a new partnership in 2017 (the 2017 Partnership), the parties had again agreed to continue it on similar terms and, as with the 2016 Agreement, this constituted a new agreement (the 2017 Agreement) rather than a variation of the 2014 Agreement. Again, even if Clause 44 did apply, the notice to the NHS signed by all four partners satisfied its requirements.

Since the 2017 Partnership was not a partnership at will, but was instead governed by the 2017 Agreement, the defendants could not effectively dissolve it on notice as they had purported to do in 2021. It continued until 18 April 2023, the date at which the claimant accepted that it had ended. The claimant was therefore entitled to payment of the Annual Payment until then.

The court also held that the claimant was entitled to the Annual Payment before the taking of the dissolution accounts of the partnership. In *Hurst v Bryk* [2002] 1 AC 185 the House of Lords held that internal partnership debts on dissolution were to be settled by an account, unless an account had already been taken or, exceptionally, would serve no useful purpose. However, this general rule was subject to exceptions. In *Mukerjee v Sen* [2012] EWCA Civ 1895 the court held that where an overpaid partner wished to retain what he was entitled to, he should pay to the other partners what he owed them without waiting for the taking of dissolution accounts. That exception applied here. The defendants here had been overpaid, having appropriated to themselves the net profits of the 2017 Partnership without regard to the Claimant's priority right to the Annual Payment. The fact that the claimant had not claimed a dissolution account did not affect this conclusion.

Finally, the court rejected the argument that the trial judge had failed to take into account the potential liabilities of the 2017 Partnership to the NHS when concluding that the claimant was entitled to claim the arrears of the Annual Payment in advance of the dissolution accounts. The defendants had prepared partnership accounts, on the basis of which they had shared the profits, and even if this was done in the incorrect belief that the partnership existed only between themselves, they would still have had to take account of any potential liabilities to the NHS or others whenpreparing those accounts.

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***Ross (on behalf of HRP Complete Solutions LLP) v Phillips and other companies*** **[2025] EWHC 2058 (Ch)**

On 5 December 2013 the claimant, Ross, and the first defendant, Phillips, formed HRP Complete Solutions LLP (the Old LLP). On 15 January 2014 they formed a company (the Old Company) in which they were the directors and equal shareholders. An apparent written resolution of the same date showed that 95 of the 100 shares were held by Phillips, 3 by Ross, and 1 each by Phillips' mother and his former wife, but Ross claimed that she had not knowingly signed this resolution.

On 14 August 2014 Phillips made a declaration that three properties which he owned (the Properties) were held on trust for the Old LLP, and he and Ross made a similar declaration over a property which they owned jointly. Minutes of a meeting of the Old LLP on 23 October 2014 recorded a decision to contribute all four properties to the LLP.

The relationship between the parties broke down, and their personal relationship ended by separation in March 2015. In February 2015 forms were submitted to Companies House recording the following:

- the written resolution of the Old Company of 15 January 2014;
- the appointment of the Old Company as a third member of the Old LLP, allegedly agreed at the meeting on 23 October 2014;
- the incorporation of a company solely owned by Phillips (the New Company); and
- the incorporation of an LLP whose members were Phillips and the New Company (the New LLP).

On 31 October 2015 the Old LLP purportedly made a declaration of trust over the Properties in favour of the New LLP (the Declaration). Ross claimed that this was invalid and that the Old LLP remained the beneficial owner. The court upheld her claim.

First, Reg 7(6) of the Limited Liability Partnerships Regulations 2001 provides that, subject to any contrary agreement,

> 'Any difference arising as to ordinary matters connected with the business of the [LLP] may be decided by a majority of the members, but no change may be made in the nature of the business of the [LLP] without the consent of all of the members'.

The court noted that in relation to the equivalent provision in s24(4) of the Partnership Act 1890, the authors of *Lindley & Banks on Partnership* (21st edn at 15-15) had given as an example of a decision which was not an ordinary decision one which

> 'commit[ed] the partners to a relationship which is fundamentally different to that of partnership, stripping out all or virtually all of the firm's assets and, ultimately bringing about its dissolution'.

Here, virtually all of the Old LLP's assets were stripped out by transferring them to the New LLP, and it was subsequently struck off and dissolved (though later restored).

Second, there had been no contrary agreement to displace Reg 7(6). Phillips' claim that there was detailed signed written agreement to this effect had not been part of his pleaded case or put to Ross in questions and was therefore not a claim open to him. Furthermore, correspondence with the accountants showed that they had rejected the existence of such an agreement. It was also inherently improbable that Ross, perhaps with her solicitor, had destroyed it, and more likely that it never existed.

Third, even if there was no requirement for unanimity but only for a majority, the Declaration would still have been invalid, because there was no valid appointment of the Old Company as a third member of the Old LLP. There were minutes of a meeting of Ross and Phillips as members of the Old LLP recording a decision to appoint the Old Company as a member, but the court held that there had in fact been no such meeting or decision. First, there was at least one document, the written resolution of the Old Company, which had not been signed knowingly by Ross. She had told the police that she had refused to sign it, and would have had good grounds to refuse, given that the new shareholding would have been inconsistent with the ownership of the Old LLP. Second, the advice to Philips for such a written resolution came long after the date he claimed it had been signed. Third, Ross had given evidence that some documents were presented to her for signature in the middle of the night. Fourth, there was no obvious reason why the originally registered shareholding did not reflect a resolution purporting to be made on the same date. Finally, no form to update the register was submitted until weeks after the purported dilution of shareholdings and appointment of the Old Company as a member of the Old LLP.

The court also held that there was no abuse of process on the basis of issue estoppel or finality in litigation (*Henderson v Henderson* [2002] 2 AC 1). First, the proceedings in the Family Court had been brought by Ross personally and not, as here, as a derivative claim on behalf of the Old LLP, and she was therefore not suing in the same capacity. Second, the issue had not necessarily been determined in the family proceedings; whether the Old LLP could challenge the New LLP's apparent ownership of the Properties had not been a question at all in those proceedings, and indeed the Old LLP had not then existed as it was not restored to the register until later. Third, the family proceedings had been a fairly summary process whereas the current proceedings had required a four day trial. Fourth, ownership of the properties was only one of many circumstances at issue in the financial

claim made in the family proceedings, whereas it was the central issue in the current case. Finally, the court had also not been shown anything to establish that the Family Court had jurisdiction to hear derivative claims and, in any event, these would have needed the restoration of the Old LLP to the register and permission to continue the derivative claim.

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