

***Robertson v Collins* [2025] EWHC 3149 (Ch)**

This case concerned a dispute as to whether the business relationship between the parties, to develop a house into a hotel, was one of partnership or employment, and when and how any partnership was dissolved. The business venture between the parties was. As the property was situated in France, and proceedings in France were contemplated, the court gave a particularly extensive and detailed analysis of relevant English law.

The court noted that s1 of the Partnership Act 1890 defined a partnership as ‘the relation which subsists between persons carrying on a business in common with a view to profit’. The correct approach to this broad test had been summarised in *Dollar Land (Cumbernauld) Ltd v CIN Properties Ltd* [1996] SLT 186 as:

There is no simple or single test which can be applied in every case so as to establish or negative the existence of a partnership. All the relevant features of the parties’ relationship must be examined and a view reached on the basis of all the features.

The court then enumerated the types of factors that might be relevant, as per *Dollar Land*:

- (i) Partners will typically share in the profits and obligations of the partnership;
- (ii) A loan to the partnership is a relationship entirely different to partnership;
- (iii) Common capital indicates partnership
- (iv) Partnership typically allows any partner to exclude the admission of new partners;
- (v) Partnerships will usually keep joint records.

In contrast, the test for employment in *Ready Mixed Concrete (South East Ltd) v Minister of Pensions and National Insurance* [1968] 2 QB 497 requires that:

- (i) The employee agrees that, in consideration of remuneration, they will provide their own work or skill in performance of service for the employer;
- (ii) The employee agrees that in the performance of that service they will be subject to the other’s control; and
- (iii) The other provisions of the contract are consistent with it being a contract of service.

The court noted that the relationships of partnership and employment were mutually exclusive and so it was not possible to simultaneously be both a partner and an employee (*MacKinlay v Arthur Young McClelland Moores & Co* [1990] 2 AC 239).

The court concluded that the agreement which the parties had reached was clearly for a partnership. First, the agreement was for a 70/30 share of profits and although Robertson had contributed all the cash at the outset, and thus faced the initial financial liability, Collins’ name was on many of the bills, he was a contracting party with the architects, and he had purchased a car for the business. Second, both parties were to make capital contributions - cash from Robertson, and art and furniture from Collins. Third, these contributions were to become partnership property, rather than loans. Fourth, it was agreed that no other parties would be involved. Finally, the partnership kept joint records.

In contrast, the facts were not suggestive of employment. First, Collins had not merely been subject to limited control, as many employees were, but was subject to no control at all; Robertson had merely been sent brief updates, often after the event.

Second, although an employee could become a partner, that was not the case here. All of the factors indicating partnership had existed from the start, and the court rejected Collins' argument that external investment would have been the trigger for a change to partnership. Although external investment was contemplated, it was also contemplated that it might never occur, and Collins would clearly not have accepted that he might never be a partner.

Third, although Collins was paid regularly by Robertson, and the sums were described as salary, that was not conclusive and in all other respects he looked like a partner.

Fourth, the court rejected Collins' argument that since the business had not generated profits, he could only be paid by way of an employee salary. Salaried partners who did not receive a share of profits could still be true partners (*Tiffin v Lester Alldridge LLP* [2012] EWCA Civ 35 and *Stekel v Ellice* [1973] 1 WLR 191), and a partnership could exist before profits were made (*Khan v Miah* [200] 1 WLR 2123).

Fifth, although the parties' own description of the relationship could be relevant, they reached no agreement on this (c.f. *Quashie v Stringfellow Restaurants Ltd* [2012] EWCA Civ 1735); and while exchanges subsequent to an oral (though not written (*Maggs v Marsh* [2006] EWCA Civ 1058)) agreement could affect its interpretation, the evidence here was weak.

As to when and how the partnership had dissolved, the court rejected Robertson's argument that it was a partnership at will and she could leave at any time.

First, the project was a longer term one, with a return contemplated in three to six years, and this was not consistent with Robertson having a right to walk away at will.

Second, Collins repeatedly sought security of tenure and income, as his desire to be on the title documents to the property and his requirement for a salary made clear; and both parties had continued to try to persuade the bank to permit him to be a joint owner of the property.

Third, at the time of the agreement Robertson was the only source of funding, and it was wholly possible she might remain so. It was therefore implausible that Collins would have agreed to partnership on terms that allowed her to leave before alternative funding was secured, since this would have ended the project.

Finally, the project which the parties contemplated in their agreement was either opening a hotel or securing additional funding and opening a bigger hotel; they did not consider any scenario where Robertson could leave at will.

The court concluded that the partnership was for one of two specific undertakings; to open the hotel or secure an external investor who would buy Robertson out in whole or part. Both

had failed. The capital had been spent, and the property was nowhere near being a hotel or attracting external investment and did not have the relevant permissions from the local authority. Robertson was therefore entitled to terminate the partnership at that stage. The court also held that the way in which Collins had repeatedly addressed Robertson indicated that there was no longer mutual trust and confidence between the parties, and therefore it would have been prepared to dissolve the partnership under the Partnership Act, s35(d) (conduct by one partner such that it is not practicable for the other partner to carry on the business in partnership with them) and (f) (circumstances such that it is just and equitable to dissolve the partnership).

***Cobden v Cobden* [2025] EWCA 1581 (Ch)**

The High Court judgment in this case was noted in detail in the APP Legal Update for September 2024. It made a *Syers v Syers* order for the exceptional buyout of the defendant partner by the claimant partner at a price to be determined by the judge by reference to expert valuation, in place of a full winding up. It did so on the ground that the claimant had evidenced his expectation of becoming the successor to the farm which had been the partnership's business, and of having built up the business in reliance on that expectation. The defendant appealed, seeking an order for the partnership assets to be sold on the open market, with permission for each partner to bid.

The Court of Appeal dismissed the appeal. It held that the trial judge had been entitled to find that there was a shared understanding that the claimant would be able to buy out the defendant at a fair price when the partnership came to an end, and that the claimant had relied on this to his detriment. The judge was therefore entitled to find that a "proprietary estoppel-ish" equity had arisen and that, as a result, it would be unfair and unjust to order sale. A *Syers v Syers* order could be made where it was necessary in order to avoid unfairness or injustice, and was accordingly justified here.

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