***Gregory Wild v Malcolm Wild, Jean Wild and Abigail Wild* [2018] EWHC 2197 (Ch)**

The claimant and the first defendant were brothers who had been partners in a dairy farm, and associated retail milk business. The partnership had been established in 1978 by their late father (who had inherited the farm from his parents) and the first defendant. In 1994 the claimant and his mother, the second defendant, joined the partnership, but the second defendant left it in 1999. The father died in 2003 and the partnership between the brothers was dissolved in 2016.

The claimant alleged that the farm, including the farmhouse occupied by the second defendant, and a bungalow occupied by the first defendant and his wife, the third defendant, was partnership property. The defendants argued that neither the farm nor the bungalow were partnership assets or, in the alternative, that they had an interest in them by way of proprietary estoppel or constructive trust. They also argued that the claimant's milk round, which he continued after the dissolution, was a partnership asset. The claimant denied this on the ground that the first defendant had stopped supplying him with milk from the partnership herd when the partnership was dissolved, and the claimant had had to start his round from scratch.

Section 20(1) of the Partnership Act 1890 provides that 'property and rights and interests in property originally brought into the partnerships stock….are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement' and the question therefore arose whether the father had brought the farm into the partnership stock. The court held that the key issue was whether the partners had agreed or consented to the property becoming partnership property (see further Lindley & Banks on Partnership (20th edn, Sweet & Maxwell 2017) at paras 18-03 and 18-13), but that although the relevant agreement or consent could be inferred or arise by implication, no more agreement should be inferred by the court than was absolutely necessary to give business efficacy to what had happened (*Miles v Clarke* [1953] 1 WLR 587 at 540). Where a partnership was formed by agreement and the bringing in of an asset was an implied term of that agreement by application of the normal rules for the implication of terms, then it was to be implied that that property had become a partnership asset. However, the fact that a particular item of property was used by a partnership for the purposes of its business did not necessarily give rise to an inference that the partners had agreed that the item was to be a partnership asset, even if there was a partnership in profits produced by it (*Geary v Rankine* [2012] 2 FLR 1409), and the implication of such a term was not normally necessary to give business efficacy to the partnership. The court noted that this was particularly so in the case of land used for a farming partnership (see further *Ham v Bell and others* [2016] EWHC 1791 and Blackett-Ord & Haren on Partnership Law (5th edn, Bloomsbury 2015) at para 8.15), even where the partnership paid the rent due under the tenancy of the farm (*Eardley v Broad* [1970] 215 EG 823).

Applying these principles to the case, the court noted that the fact that it had found that the entry 'property: £50,750' under 'Fixed Assets' in the earliest partnership accounts still available referred to the farm was not of itself determinative of the issue of whether the asset was actually partnership property (*Ham v Bell* and *Barton v Morris* [1985] 1 WLR 1257). Further, the first defendant was aged 16 at the time that the partnership was formed and had not been consulted on the inclusion of the farm in the partnership accounts. The fact that the partnership did not pay rent for use of the farm, and that partnership monies were expended on improvements to the farm and outgoings in respect of it, were consistent with it being used for the purposes of the partnership, but did not necessarily mean that it was partnership property. Similarly, the fact that the partnership claimed tax allowances in respect of the farm did not indicate that it was partnership property; the partnership accountants considered that approach to be proper even though they believed that the farm was not a partnership asset. Further, although the actions of the parents after the partnership was established could not affect whether or not the farm had been brought into the partnership when it was first established, and might reflect a misunderstanding of the position or an attempt to disregard it, those actions did indicate that they believed that the father remained the owner of the farm and was not constrained in dealing with it by the existence of the partnership. For example, they had discussed with solicitors, the transfer of the farmhouse into their names, the transfer of the bungalow to the first defendant, and a will leaving "the farm land and [the father's] share in the farming partnership to the two sons equally".

The court concluded that it would have been surprising had the father made the farm an asset of a partnership which he had just formed with his 16 year old son when the farmhouse was his home, the first defendant was not his only child, and the partnership was created for tax purposes. It was therefore not open to the court to infer an agreement or imply a term that the farm was brought into the partnership stock. It was therefore not partnership property and was the property of the second defendant, having been inherited by her on the death of the father.

Although this conclusion meant that the issue of estoppel did not need to be decided, the court nonetheless did so. It noted that a proprietary estoppel arose when a person suffered a detriment as a result of acting in reliance on a representation by the property owner that the person had rights in the property, such that it was unconscionable for the property owner to rely on his legal rights (*Thorner v Major & others* [2009] UKHL 18). The court considered that the first and third defendants had acted to their detriment in renovating and extending the bungalow in reliance on representations by the father and the second defendant that it was to be their property, such that it would be unconscionable for the second defendant to rely on their absence of legal title to it. Had the court found that the bungalow was a partnership asset, it would therefore have ruled that it was to be held on trust for the first and third defendants.

Finally, the court held that the claimant's milk round was a partnership asset despite the fact that the first defendant had ceased to supply the claimant with partnership milk, because the claimant continued to use a milk float which was a partnership asset, and the goodwill in the customers of the milk round was a partnership asset.

***Bayonet Ventures LLP and Howard v Commissions for HMRC* [2018] UKFTT 0262 (TC)**

Howard was a sole trader, and trustee of Bayonet Ventures Pension Scheme (BPVS). An LLP which he set up was stated to be the principal employer of the BPVS. HMRC undertook an enquiry into a pension scheme tax return filed by (BPVS, as a result of which it ordered Howard to pay a scheme sanction charge under ss239 and 240 of the Finance Act 2004, an unauthorised payment charge under s208 and an unauthorised payment surcharge under s209. HMRC deemed Howard to be the scheme administrator despite the fact that the BPVS Trust Deed stated that the LLP was the scheme administrator, and argued that BVPS had made an unauthorised member payments within the meaning of s164 of the Finance Act because it had made a loan to the LLP but, by virtue of s863 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), this was treated as a loan to members of the LLP and one of those members – Howard – was also a member of the pension scheme.

The Tribunal found that the loan had been made to the LLP, and the fact that the monies passed to Howard did not make it a loan to him. HMRC was not entitled to deem Howard to be the scheme administrator when he was not, and he was not therefore liable to pay any scheme sanction charge. Further, the fact that the LLP had entered into a loan agreement was not indicative that it was carrying on a business with a view to profit, and in the relevant tax year it had not done so, with the result that s863 of ITTOIA was not relevant because it only applied where an LLP carried on a trade, business or profession. In any event, there was no reason to depart from the literal rule of statutory construction in relation to s864: the section contained no words which, if applied in their ordinary grammatical sense, gave rise to absurdity and so there was no reason to modify them according to the golden rule of interpretation; it was aimed at no discernible mischief which required special interpretation to ensure that the mischief had been addressed and so the mischief rule did not apply; and equally no particular purpose had been identified which might have given rise to the adoption of a purposive approach to construction. As the Court of Appeal had noted in *Vaines v HMRC* [2018] SRC 297 **(see Legal Updates March 2018),** s863 did not provide that all the activities of an LLP were to be treated as carried on by its members; instead, it assimilated the position of LLP members with those of partners in a general partnership, by providing that the LLPs activities were treated as carried on by its members in partnership, anything done by or in relation to it was treated as done by its members as partners, and its property was held by its members, not personally, but as partnership property.

As an aside note, it is notable that the tribunal rather misleadingly referred to 'the partnership (firm) or, as appropriate, the LLP; **each of which are recognised in law as having a legal persona separate and distinct from the members of the partnership'** (author's emphasis). In fact, only an LLP has separate legal personality to its members; a general partnership (except in Scotland) does not.

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September 2018