***Razaq v Baig* [2019] EWHC 3490 (Ch)**

The parties had been in partnership repairing tyres and servicing motor vehicles, Razaq carrying out the work and Baig contributing the use of his premises. They then formed a company which carried on the same business with the help of a third participant, until the company was dissolved in 2018. Razaq wished to continue the business and entered into negotiations with Baig for a new lease of the premises, but negotiations eventually broke down and Baig took possession of the property.

This judgment concerned an appeal against an interim order. The court noted that it could not resolve any of the three issues which arose for resolution at the pending trial: whether the business after the dissolution of the company was a partnership or Razaq was a sole trader; whether any of the assets at the premises belonged to the partnership, Razaq, or the dissolved company; and whether Razaq occupied the premises pursuant to a partnership (and in that case whether as a licensee or a tenant at will), or whether it was a periodic business tenancy. However, the court noted that there was an arguable case that there was a partnership, in which case Razaq would be under a liability to account to Baig for all its financial dealings, and it was common ground that he had not done so.

The court considered that there was no seriously arguable case that the partnership could continue beyond Razaq's exclusion from the property, given that s32 of the Partnership Act 1890 allowed a partnership to be terminated by notice of intention to dissolve, and the exclusion implied the giving of such notice. However, this did not resolve the issue because, as established in *Lie v Mohile* [2014] EWHC 3709 (Ch), a partner who owned the premises from which the partnership business was carried out was taken, after a dissolution, to have granted a licence to the other partner to enter the premises for the purposes of the partnership business. Dissolution would not terminate the licence since the business itself was not thereby terminated but continued for the purpose of winding up. In the making of the interim order in the present case, the judge had therefore been wrong to rule that once the partnership was over, Razaq had no right to enter the premises and Baig was entitled to vacant possession.

However, *Lie* did not mean that a former partner had the right to occupy the premises forever, although Razaq must be allowed a reasonable period to wind up the business and dispose of the assets. The court assessed this period by reference to (i) the fact that there were customer's cars still awaiting repair, and that preserving the value of the business for sale required those repairs to be completed, (ii) that the electricity supply had been cut off which caused delays in conducting those repairs, (iii) that the ownership of the assets – and thus which of them could be taken by Razaq when vacating the premises – was currently unclear, and (iv) the fact that the trial was only a few weeks away and that in the intervening Christmas and New Year period it would be difficult to re-let commercial premises. The court concluded that the least unjust approach would be to allow Razaq to continue to occupy the premises until trial, but place him under a duty both to preserve the assets, except that he could sell tyres in the ordinary course of business, and to keep an account of all revenue and expenses of the business over that period, including the tyre sales.

***Boyle v Burke and Cave* [2019] EWHC 3364 (Ch)**

Boyle was a retired partner entitled to a pension from the partnership. He claimed that the partnership dissolved in 2012 when the business was transferred to a company set up for the purpose, and that event triggered an entitlement under the partnership agreement to a lump sum to cover future pension benefits. The defendant, who were the only partners at that time, argued that the partnership had continued despite the transfer of the business. It had retained the lease of the business premises which it sublet to the company for a small profit, provided cleaning services to the company, and continued to prepare partnership accounts.

The court noted that in *NatWest v Jones* [2001] BCLC 98, in which a partnership business was transferred to a company set up for the purpose, and the only possible ongoing business was the collection of rent under a farm tenancy granted by the partners to the company, it had been held that the mere fact that the partners ceased trading did not end the partnership. In *Chahal v Mahal* [2005] BCLC 655 it had been held that although by transferring all the assets and operational activities of the partnership to a company, especially if the company's shares were issued to all the partners pro rata, it could be inferred from that conduct that they had actually agreed to end the partnership, such an inference would not always be possible. Indeed, in *Chahal* it was not possible because one of the partners had not been involved in the sale to the company and was not a shareholder in it.

The court gave other examples where it could not be inferred that the partners intended to terminate a partnership, despite it ceasing to have assets or carry on a business; where a fresh venture was contemplated; where the previous business was to be revived; where the partners' position as regards tax liabilities was to be maintained; or where certain rights or obligations were to be crystallised. It emphasised that the definition of a partnership in s1 of the Partnership Act 1890 – two or more persons carrying on a business in common with a view of profit – need only be satisfied in order for the partnership to be formed; it was not a continuing requirement and a partnership could only end through dissolution, and not through failure to satisfy the requirements of s1.

The court therefore concluded that mere cessation of the partnership's business here was insufficient to establish that the partnership had dissolved, and there was no evidence of any agreement by the defendants to dissolve it. The provisions of the partnership agreement as to the provision of a lump sum pension entitlement on dissolution therefore did not come into force.

***R (on the application of Cobalt Data Centre LLP 2 and Cobalt Data Centre 3 LLP) v HMRC Commissioners: Cobalt Data Centre 2 LLP and Cobalt Data Centre 3 LLP v HMRC Commissioners* [2019] UKUT 342 (TCC)**

On 4 and 5 April 2011 respectively, two LLPs acquired assets including the developer's interest under a construction contract to construct data centres within an enterprise zone. They appealed against HMRC's decision that they were not entitled to enterprise zone allowances (EZAs).

Sections 296 290 and 300 of the Capital Allowances Act 2001 (CAA 2001) enabled expenditure incurred on acquiring 'relevant interests'to attract EZAs if it was incurred 'under a contract entered into' within 10 years of the site becoming part of an enterprise zone. The Tribunal held that the original contract had contained enforceable obligations from 17 February 2006 when it was executed. It was therefore 'entered into' within 10 years of the site becoming part of an enterprise zone in February 2006. It also held that although no payment obligations had crystallised within that 10 years, the parties intended the contract, which had been varied in anticipation of the LLPs' involvement, but not rescinded, to regulate the construction of, and payment for, the data centres. The LLP's subsequent expenditure had therefore been incurred 'under' the contract. However, ss356 and 357 restricted EZAs to expenditure for the 'relevant interest' and excluded expenditure on other assets. The tribunal held that not all of the price paid by the LLPs for the developer's interest was 'for' the acquisition of the 'relevant interest' in the data buildings, and so apportionment was necessary, but that it required further evidence on the detail before making an order.

The tribunal also held that the LLPs were to be treated as partnerships and thus tax transparent by virtue of s283 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), because they were carrying on a trade, profession or business with a view to profit. Although the principal purpose of the LLPs was to obtain the benefit of EZAs for their members, it was sufficient that they had the subsidiary purpose of carrying on business with a view of profit. It was also not necessary that a profit be achieved; an intention to achieve a profit was sufficient. The LLPs were therefore not barred from claimed EZAs because, although the EZA regime had been ended for corporate tax purposes on 1 April 2011, before the LLPs had acquired the relevant interests, it had only been ended for income tax purposes on 6 April 2011, after they had done so.

Finally, the tribunal allowed the claim for judicial review. The relevant principles were as explained in *United Policyholders Group and others v Attorney General of Trinidad and Tobago* [2016] 1 WLR 3383. Applying these, the tribunal held that HMRC's statement to the Enterprise Zone Property Unit Trust Association (EZPUTA) that entitlement to EZAs would not be reduced by the part of the purchase price reasonably paid for 'rental support arrangements' (to defray expenses while a building was being constructed or before it was let, or to top up rent to an agreed level after it was let) was clear, unambiguous and unqualified, the LLPs acted to their detriment in reliance on it, and HMRC had not shown good reasons which they should be permitted to resile from it.

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January 2020