***Scott-Hake and Scott-Hake v Frost and Wadsworth (as joint liquidators of the Appellants t/a/ The Edwardian)* [2020] EWHC 3677 (Ch)**

The appellants had been partners in a partnership which became insolvent and had liquidators appointed to it. They appealed against an order of the court that the liquidators could make a call on them as contributories of the partnership for the full amount debts and liabilities of the partnership together with the expenses of the winding up.

Art 7 of the Insolvent Partnerships Order 1994 (IPO 1994) applied to partnerships Part V (ss220-229) of the Insolvency Act 1986 (IA 1986) on unregistered companies. Section 226 defined a contributory as a person liable to contribute to the payment of the firm's debts or liabilities or for the adjustment of the rights of members inter se or to the expenses of winding up, and provided that every contributory was liable to contribute to the firm's assets all sums due in respect of such liabilities.

However, the court held that s226 must be read in the light of the whole of the IA 1986. This was evident from the fact that s229 was entitled 'Provisions of this Part to be cumulative' and provided that the provisions of Part V were in addition to and not in restriction of Part IV, and that the court or liquidator could exercise any powers in relation to unregistered companies which could be exercised under IA 1986. It was also supported by the fact the Sch 3 to the IPO 1994 contained a series of modification to parts of the IA 1986 other than Part V. As a result, it was necessary to conduct a double 'read-across', because Art 7 of the IPO 1994 had to be read in the light of Part V of the IA 1986, and Part V itself had to be read in the light of the whole of the IA 1986. As the court noted, the problem with this 'read-across' was that partnerships were very different to companies, whether registered or unregistered, in their lack of separate legal personality and the personal liability of their partners.

Section 226 must therefore be read in the light of s79 of the IA 1986, which provided that a contributory meant every person liable to contribute to the assets of a firm in the event of its being wound up and included any person alleged to be a contributory; and s74, which provided that when a firm was wound up, every present and past member was liable to contribute to its assets any amount sufficient for payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves. Section 74(2)(b), which provided that a past member was not liable to contribute in respect of any debt or liability of the firm contracted after he ceased to be a member had to be interpreted subject to s9 of the Partnership Act, which provided that a partner was only liable for the debts and obligations of the firm incurred while he was a partner, but the wording of s74(2)(b) meant that s9 liability included the expenses of the winding up. However, partners were protected against double liability under the Partnership Act and the IA 1986, by s228 of the IA 1986, which provided that the court's permission was required for an action against a contributory for a debt of the firm.

The court held that the order appealed in this case had been made under the Insolvency (England and Wales) Rules 2016, which permitted a liquidator to apply to the court ex parte for permission to make a call, rather than s150 of the IA 1986, which provided that the court could itself make calls on the contributories. Thus s152, which provided that an order made directly by the court on a contributory was conclusive evidence that the money was due, did not apply. Instead, Rule 7.89 required the order permitting the liquidator's call to be notified to the contributories, Rule 7.90 required the liquidator's call itself to be notified contributory and, in the event that the contributory did not pay, Rule 7.91 permitted the court to make an order to enforce payment by the contributory.

It was clear that such an enforcement order must be preceded by the liquidators making a further application to the court, since Rule 7.91 required that the order provide the details of the liquidator who made the application for it, and provided that the order could include an order for the contributory to pay the liquidator's costs of the application.

Since this enforcement process must be inter partes rather than ex parte, any errors as to the liability of the contributory could be dealt with at that stage. The court therefore concluded that it was unnecessary to set aside the order, as the disputed amounts set out in it could be challenged at the enforcement stage.

Procter and another v Procter and others **[2021] EWCA Civ 167**

A farming partnership farmed land, the freehold of which was held by the trustees of a will trust. At various times, some of the partners were simultaneously also trustees. The question arose whether the partners were entitled to a tenancy created by conduct and protected by the Agricultural Holdings Act 1986 (AHA) when the written tenancy agreements came to an end in 1994**.**

The court noted that s72(1) of the Law of Property Act 1925 (LPA), which allowed conveyances of property by one person to himself jointly with another person, was not applicable because conveyances must be in writing, which was not the case here. However, *Rye v Rye* [1962] AC 496, which held that landlords could not grant a lease to themselves by oral agreement, did not apply to cases where there was not a complete identity between landlord and tenants. Although a tenancy required exclusive possession by the tenants as against the landlords, this could be satisfied even where there was some overlap of identity, because the tenants were effectively a single owner as against the landlords, and were entitled to physical possession as opposed to possession in the sense of receipt of rents. Further, s82 of the LPA provided that any agreement entered into by a person with himself and one or more others would take effect as if entered into with the other person(s) alone. The alleged tenancy was therefore capable of being created.

The court held that the tenancy was a tenancy at will both at common law and in equity, and that it had been converted into a periodic tenancy because, as required by s2 of the AHA, it was let for use as agricultural land and, being at will, was let for an interest less than a tenancy from year to year.

Jordan v O'Reilly **[2021] SC EDIN 8**

The pursuer claimed damages for asbestos exposure while employed by a partnership between 1974 and 1978. The defender was the executor of the estate of a former partner who had retired from the partnership in 1981 and died in 2004. The partnership was now dissolved.

Most of the judgment dealt with legal issues relating to executors or procedure. However, of interest in relation to partnership law is the ruling that the estate of the deceased partner had a continuing liability for debts and obligations of the partnership while they remained unsatisfied, because of ss9, and 17(2) of the Partnership Act 1890. Section 9 provided that every partner was liable for the debts and obligations of the firm incurred while he was a partner, and that after his death his estate was liable for any debts and obligations which remained unsatisfied. Section 17(2) provided that a partner who retired from a partnership remained liable for partnership debts and obligations

incurred before his retirement. Although s36(3) provided that the estate of a retired (or deceased) partner was not liable for debts contracted after the date of his retirement (or death), the liability here arose before that date, and remained until the obligation was satisfied. The court held that it was competent and relevant for the pursuer to sue the defender as executor, for the purpose of constituting a claim against the estate of a deceased partners and, in turn, the former firm of his employers (and potentially their insurers).

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March 2021