Prasad v Hanif **[2021] EWHC 598 (Ch)**

The two parties were doctors who had practised in partnership together. A partnership deed made in 2013 stated that the partnership commenced on 1 April 2011, but the defendant alleged that it had begun in 2002. The relationship broke down and in earlier proceedings an order dissolving the partnership was granted. In this judgment the court addressed a number of preliminary issues which needed to be resolved before the final account could be taken.

The court held, first, that the claimant was entitled to a declaration that the defendant should indemnity the partnership against its liability to three dismissed employees. The defendant had taken disciplinary proceedings against them after they complained about her to the GMC. The claimant had opposed such proceedings and, when the employees brought proceedings in the Employment Tribunal and the defendant instructed solicitors to put in a defence, the claimant had informed the Tribunal that he supported the employee's claims. The court considered that the claimant was not in breach of his duty to the partnership, because a partner's duty to the partnership could not require him either to refrain from stating his own genuine position or to acquiesce in the submission of a defence by the defendant which contradicted his own position and indeed sought to blame him. Although the firm's insurance policy did contain a condition that the insured should make no admission of liability, the claimant was not aware of this and in any event he was not purporting to make an admission of liability on behalf of the partnership. The court also held that the defendant should provide an indemnity for any additional liability to those employees for which the partnership would not have been liable but for the defendant's breach of duty in responding to complaints to the GMC which were not frivolous or dishonest by subjecting the employees to a disciplinary process where she was prosecutor and judge, and where she had clearly decided in advance that the outcome should be immediate dismissal.

Second, the court held (in a rather less than clear section of the judgment) that there should be a declaration that neither the defendant nor the partnership had any interest in the practice property. It concluded that the defendant had been taken on in 2002 as a salaried partner not an equity partner, on the basis that the claimant had always viewed the practice as his own, the partnership accounts did not show her as an equity partner, she appeared to have been paid a fixed salary rather than a profit share, and there was no evidence that the business bank account at the time was converted to a partnership account with her as a signatory or that she was a named party under the loan agreements. Her claim that the property became a partnership asset because partnership monies were used to fund extensions and improvements to it must therefore fail. First, the practice property was always held in the claimant's sole name and was treated as an asset of the practice and, since the defendant was not an equity partner, the practice monies used to fund improvements to the property were not partnership monies. Second, the property was never transferred into joint names. Third, the partnership accounts reflected the fact that the practice property was owned by the claimant alone. Finally, the partnership deed was to be interpreted as providing that there was no pre-existing equity partnership predating 1 April 2011 and that the practice property belonged to the claimant alone.

Third, the court held that there should be a declaration that the claimant was not obliged to indemnify the partnership in respect of proper partnership expenditure, even though the claimant had authorised it without the defendant's consent as required by the partnership deed. Further, the partnership deed did not make provision for its provisions to operate retrospectively, and therefore expenses incurred before 1 April 2011 were not subject to the requirement of the defendant's consent.

The court also held the that there should be a declaration that the partnership accounts be adjusted to take account of the partnership income which the claimant had arranged to be paid into his own bank account instead of the joint partnership account after the relationship between the parties broke down.

***Re Bell Pottinger LLP, Secretary of State for Business, Energy and Industrial Strategy v Geoghegan and others* [2021] EWHC 672 (Ch)**

The applicants sought to strike out disqualification proceedings brought against them under the Company Directors Act 1986 (CDDA), as applied to LLPs by the Limited Lability Partnerships Regulations 2001. Section 6(1) of the CDDA enabled the court to impose a period of disqualification on a person (a) who is or had been a director of an insolvent company, and (b) whose conduct as a director made them unfit to be concerned in the management of a company. Section 12C required the court to have regard in particular to the matters set out in Sch 1 when assessing unfitness. The applicants argued that since they were not members of the management board of the LLP, they were not responsible for its management and s6(1)(b) of the CDDA could therefore not apply to them.

The key issue which arose was whether the provisions requiring the word 'member' of an LLP to be substituted for the word 'director' in the CDDA, indicated the Parliament had intended to bring junior members of a large LLP who had no involvement in its management within its ambit.

The court noted that the purpose of the CDDA was to protect the public against the future conduct of companies by persons whose past records as directors had shown them to be a danger to others, and to raise the standards of those who trade with the benefit of limited liability.

Regulation 4(2) of the LLP Regs provided for the CDDA to apply to LLPs with modifications including that 'references to a director…shall include references to a member of [an LLP]'. The court held that this meant that s6 CDDA applied to an LLP member whose conduct as an LLP member made them unfit to be concerned in the management of a company or an LLP. It also meant that the scope of disqualification in s1 CDDA, which provided for disqualification as a director, was extended to disqualification as an LLP member.

The court noted that although director necessarily had a management role, the particular role and its responsibilities could vary greatly. It also considered it significant that s6(1A) CDDA expanded the relevant conduct of a director to include their 'conduct in relation to any matter connected with or arising out of the insolvency' without referring to management, and that none of the matters to be taken into account in assessing unfitness set out in Sch 1 CDDA referred to management. Although that was a non-exhaustive list, it indicated that relevant conduct was not limited to management at its highest level. The court therefore held that the only limitation on the conduct that could be relied on as indicating unfitness was that it had to be conduct in the capacity of a director.

As to LLP members, the court held that s6(1)(b) could not have a different meaning when applied to them. Parliament could not have intended it to apply other than to all LLP members, since the LLP Act 2000 only defined members and did not require LLPs to have a management board or any particular structure. The court also noted that s6(1)(b) as applied to partnerships by the Insolvent Partnerships Order 1994, was modified so as to apply to anyone whose conduct as an 'officer' of the partnership made them unfit to be concerned in the management of a company, an 'officer' being defined

as a 'member' of the partnership or 'a person who has management or control of the partnership business'. Thus the provision was as wide as for LLPs, applying to all partners, even though partners did not have the privilege of limited liability. The court considered that this demonstrated Parliament's intention for the CDDA to have the widest possible reach, in order to raise standards in business generally and to protect the public. This was also demonstrated by the fact that a disqualified person was prohibited from, inter alia, being a member of an LLP, and that prohibition was not qualified. A disqualification order therefore meant that the disqualified person could not be even the most junior member of an LLP with no management role at all.

Finally, the court noted that the safeguard for a junior member who was uninvolved in management was that under s7(1) CDDA, the Secretary of State could only bring proceedings if it was expedient in the public interest to do so.

The court's helpful summary (at para 79 of the judgment) is worth quoting in full:

> (1) All members of an LLP are potentially liable to face disqualification proceedings;
> (2) There is no qualification to the jurisdiction over all members under s.6 CDDA that the member has to be on the management board or at a level equivalent to a director in a company;
> (3) The conduct that can be relied on is anything that is done in the capacity of a member of the LLP;
> (4) The test for unfitness is the same as in relation to companies, namely the (pejoratively) so called "jury question" – see Dillon LJ in *Re Sevenoaks Stationers Ltd* [1991] Ch 164, 176F – whether such conduct makes them unfit to be concerned in the management of a company or an LLP;
> (5) There is no line drawn in the legislation, and there is no justification for implying such a line, as to the relevant conduct that can be relied upon by the SofS.

The court concluded that although the applicants' actual roles and responsibilities would be explored at trial, because they were relevant to whether they had shown themselves to be unfit, as members of the LLP they were liable to disqualification proceedings. The proceedings would therefore not be struck out.

Allianz Global Investors GmbH and others v Barclays Bank plc and others
[2021] EWHC 399 (Comm)

Over 170 claimants, mostly investment funds, sought damages from a number of defendant banks for illegal and anti-competitive manipulation of the foreign exchange market in breach of duty under the competition legislation. The defendants denied liability but argued that if liability and loss were proved, the claimants had mitigated their loss in part by passing on or transferring the loss to others. The claimant sought to have this pleading struck out.

The judgment focused on whether there was a real prospect of the 'pass-on defence' succeeding at trial, and in particular: i) whether a prohibition on an investor bringing a claim against a third party should be implied into investment contracts; ii) whether as a matter of trust law it was for the funds as trustees of the investments to sue or whether the loss had been passed on to the beneficiary investors when they withdrew their investment; iii) whether as a matter of company law the rule against reflective loss prevented investor shareholders from bringing a claim because when they withdrew their investment they did not suffer a loss separately from the loss suffered by the company; and iv) and whether as a matter of partnership law, losses were suffered by the partners collectively and a claim to recover those losses was a partnership asset.

The court held that issue i) should be left to be determined at trial. As to the other three, the court concluded that the pass-on defence could not be shown to be impossible or bound in law to fail in relation to any of those three claims. They had a real prospect of success and should not be struck out.

On the partnership issue in particular, the court held that a partnership claim against a third party was a partnership asset which must, in the case of a limited partnership, be brought by the general partner(s) in the name of the partnership as a whole (*Certain Limited Partners v Henderson PFI Secondary Fund* [2013] QB 934). However, the duty owed by the wrongdoer as a matter of competition law was owed to all persons, including each partner, and if the wrongdoer caused damage to the partnership, the financial interests of the partners were also affected. If a partner withdrew their investment the loss was crystallised and they could bring their own claim as an ex-partner rather than as a partner. The court also confirmed that the rule against reflective loss did not apply to partnerships.

***Uthyavel v Raviraj* [2021] EWHC 501 (Ch)**

The parties disputed the existence of a partnership, and the ownership of business assets, in relation to two convenience store businesses which were acquired in 2003 and 2008 respectively. The freehold of the 2003 premises, and two flats above them, were acquired subsequently. The defendant later excluded the claimant from the 2003 business and the claimant served notice of dissolution of the partnership. The bank appointed receivers to the 2008 premises, and the receivers held the net proceeds of sale pending the outcome of this claim.

The court held that the parties traded in partnership in the 2003 business, based on the following facts:

- the parties expressly agreed that the defendant would acquire the lease and business for the parties' joint benefit and that they would trade there as equal partners;
- the claimant had contributed half of the purchase price;
- the parties were named jointly on the off-licences granted for the business;
- the bank loan and bank accounts were in joint names, and in one case the parties had asked for the account name to be 'The Partners';
- although the vans used by the first business were in the claimant's name, all costs and expenses relating to them were paid by the business;
- equal amounts were paid to the two parties from the business, and equal car allowances;
- the defendant kept no record of the amounts paid to the claimant just as he kept no record of his own drawings; and
- the parties had made it clear that whatever sums one of them took out of the business, the other was entitled to take the same amount.

The court held that the 2008 business were acquired with the intention – which was carried out - of adding to the existing partnership business by providing another convenience store, and a flat above which was to be let and provide income to service the mortgage with the shortfall being paid out of general partnership funds. It based its ruling on the following facts:

- the property was purchased in joint names and was beneficially jointly owned;
- the mortgage instalments were paid from bank accounts which were in joint names;

- the defendant (contrary to his arguments) had been extensively involved in the business, including applying for trading accounts with suppliers, applying for the electricity account, being named as designated premises supervisors on the premises' licence, and making entries in the business diary, some of which were personal to him;
- the entry in the business diary referred to the opening of the business by both parties and to 'our 2nd building';
- the new bank account opened for this business was in joint names;
- the name of the business included the initials of both parties;
- the defendant held himself out as a partner in his application for an electricity supply account;
- when the property was sold, the defendant told the estate agent that it was being sold because of a 'partnership split'; and
- the rent from the flat was added to the general partnership funds.

The court held that the freehold of the 2003 premises and the two flats above them was bought for the benefit of both parties as partnership property, based on the following facts:

- the initial mortgage application was made in joint names, and was refused because of the poor trading of the second business;
- the mortgage payments were paid from one of the joint bank accounts opened for the first business and funded by the rental income from the two flats;
- the non-mortgage balance of the purchase price was derived from the first partnership business; and
- the defendant subsequently agreed to put the claimant's name on the title of the property and, consequently, the mortgage.

These conclusions also led the court to hold that the three bank accounts were all partnership accounts, and the monies in them partnership monies.

It further held that the terms of the partnership were that the parties shared capital and profits, and were liable for debts and losses, in equal shares.

The court concluded that since a partnership had existed and had been dissolved, dissolution accounts should be ordered. It held that there was no need to order a separate account in relation to either:

- sums withdrawn from the partnership bank accounts, since the funds in it were derived from the partnership business and were thus partnership funds, and in the dissolution account both parties would have to account from all their drawings from the partnership; or
- the rental income from the flat at the second premises, since the defendant's claim that the income was due to him personally had been rejected, and it would be brought into the dissolution accounts as partnership income.

Since the court had also rejected the claim that the claimant was solely responsible for the mortgage payments on the second premises, the court refused to order the claimant to account to the defendant for loss and damage resulting from the appointment of receivers to those premises.

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