

UK Case Law

JULIENNE ROWLANDS v PAUL SIMON GRAHAM HODSON (2009)

[2009] EWCA Civ 1025

CA (Civ Div) (Sedley LJ, Arden LJ, Rimer LJ) 16/10/2009

PARTNERSHIPS - LEGAL PROFESSION

DISSOLUTION : PARTNERSHIP AGREEMENTS : PROFITS : SOLICITORS : VARIATION : DEED OF PARTNERSHIP ENTERED INTO : ALLEGED IMPLIED RELEASE OF PARTNERSHIP SHARE : ALLEGED IMPLIED DISSOLUTION : s.1 PARTNERSHIP ACT 1890

The appellant had been a partner in a firm of solicitors at the relevant time and failed to show that there was in fact no partnership under the Partnership Act 1890 s.1.

The appellant (R) appealed against a decision ((2009) EWHC 430 (Ch), (2009) PNLR 23) declaring that she had been a partner with another defendant (C) in a firm of solicitors (T) and making consequential orders for payment of various sums by her to the respondent (H). H had continued an action started by his late mother against a number of defendants including T and C. A judgment had been obtained against all the defendants but part remained unsatisfied. H then obtained permission to join R as a defendant in order to enforce the judgment against her on the basis that she had been a partner with C in T. R disputed that she was such a partner and a trial of that preliminary issue was directed. R's case was that she had sold 99 per cent of her practice to C and thereafter her involvement in the partnership business was effectively limited to satisfying the Law Society supervision requirement in respect of C who was not sufficiently qualified to practice on his own without supervision. The Law Society later dispensed with the supervision requirement because of R's ill-health. R submitted that although she had signed a deed of partnership with C for three years there was no partnership in fact because from the outset R and C had implicitly agreed to a release of her one per cent interest in the profits and assets and after the grant of the supervision dispensation there had been an implied dissolution of the partnership.

HELD: (1) The partnership deed undoubtedly purported to create a true partnership between C and R and it was not suggested that they intended by that deed to do other than create a genuine partnership between them or that it was in any respect a sham. The reason they set out to create a partnership was because they recognised that R needed to be in partnership with C in order to be able to provide supervision in compliance with the Solicitors' Practice Rules 1990. The terms of the deed covered the three requisites of a partnership required by the Partnership Act 1890 s.1 : it provided for the establishment of a business to be carried on by two or more persons in common with a view of profit; and, following its execution, the two of them carried on such a business. R only carried out a very small proportion of work of her own for the partnership, but that she was likely to do so was reflected in the nominal one per cent share in the partnership profits and business that she retained. It was, however, crucial that she was also intended to, and did, play an important role in supervising the practice, without which no business could have been carried on at all. (2) There was no evidence from which it could be inferred that, either at the outset or at some subsequent imprecise point in T's history, C and R tacitly agreed that she would release her share in the profits and business to him. There was no evidence that she ever made a binding agreement to release her right to share in the profits; and, if she did not, she strictly remained entitled to her share. In any event the receipt of a share of profits was not a prerequisite of a claim to be a partner, *M Young Legal Associates Ltd v Zahid (A Firm)* (2006) EWCA Civ 613, (2006) 1 WLR 2562 considered. (3) There was no basis on which it could fairly be said that the partnership deed did not continue to govern the relationship between R and C. The only real change that happened in the firm's history was the dispensation from supervision. That could not by itself have operated to dissolve the partnership. That could only have been achieved by an agreement to that effect by the two partners, but there was none.

Appeal dismissed

Counsel:

For the appellant: Justin Fenwick QC, Annabel Shaw

For the respondent: Max Mallin

Solicitors:

For the appellant: Barlow Lyde & Gilbert LLP

For the respondent: Morrison & Foerster (UK) LLP

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