

Partnership law assignment

Law



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Introduction and Issues

The facts presented here indicate that a partnership has been set up between three individuals and that there is a partnership agreement in place to deal with the operation of the business. Several factual situations have arisen and this will require the partners to look at the agreement entered into between the parties, as well the statutory provisions that are contained within the Partnership Act 1890 (PA). When looking at the situations being presented here, it is recognised that there is a partnership agreement in place and this would need to be seen in its entirety, in order to advise fully. Based on the above, this discussion will look at the facts presented and the extract of the agreement, alongside the statutory provisions, in order to determine ultimately the way in which the various issues raised can be dealt with. This will depend on a combination of the statutory provisions and anything that may be in a partnership agreement. As the partnership agreement has not been seen, the basis of this advice is that the partnership agreement is in keeping with the statutory and common law provisions. Four key issues have been identified and will be discussed in turn. Firstly, there are queries in relation to the potential appointment of either Tina or Helen, both of whom are related to Andrea and for slightly different reasons she wishes them to be included in the partnership. Secondly, there is a question in relation to the potential expulsion of Julia from the partnership. Thirdly, a suggested arbitration clause has been requested and is contained below. Finally, there is the query of the liability of Michael to the supplier and his relationship with the partnership and the supplier, i. e. whether he was acting as an agent. Therefore the supplier could legitimately bring an action

against the partnership for the money owed or the question as to whether Michael would be liable personally.

Appointment of Tina and / or Helen

There are duties placed upon partners by virtue of their entering into partnership arrangements. These are stated in the Partnership Act 1890. Firstly, there is the duty to act in the utmost good faith towards the other partners. Secondly, there is a duty for the partners not to make a personal profit and not to place themselves in a position when the interest conflicts with their duty.

As there are three partners within the current partnership arrangements, a majority i. e. two of the partners would be able to agree the inclusion of another partner. In principle, therefore, if Catherine remains unhappy about the proposition, she alone could not block this appointment. It is however argued, particularly in the case of Tina, that Andrea is acting in breach of her fiduciary duties to the partnership by attempting to include Tina, simply so that the partnership could remain within her family, in the future. There is a strong argument that putting Tina forward is a conflict of interest and therefore should not be allowed by virtue of the Partnership Act. Therefore, Catherine could present this argument, even if she remains in a minority.

The position in relation to Helen is somewhat more complex, as it could be argued to be in the partnership's best interests to recruit a much needed bookkeeper who is suitably qualified. As it would seem that Andrea and Julia would vote in favour of including Tina and Helen in the partnership, it would then be up to Catherine to argue that Andrea is acting in breach of her duties. It would be considerably easier for Catherine to prove this in the case

of Tina who seemingly has no purpose in the partnership save as to further Andrea's interests.

In reality, however, it would be necessary to look at the provisions of the partnership agreements, in order to ascertain what would happen in the event of a dispute. The ultimate sanction for a partnership that is no longer tenable is the winding up of the partnership and this may not be desirable to any of the partners (section 26). In that case, consideration should be given to any arbitration of the possibility or the opportunity of one party to buy another out. It is not clear what provisions are contained within the partnership agreement for this and therefore the rules established in the Partnership Act 1890 prevailed on the partnership, with the danger of being wound up, if no agreement can be reached.

It is also noted that, in accordance with clause 20, a notice of expulsion could be issued upon Andrea stating that she has breached her duties as a partner within the partnership. Although Catherine is unhappy with their actions, there is no indication that Julia is insufficiently unhappy that she is likely to be willing to pursue this route, although it does present a potential option in the event that both Catherine and Julia feel sufficiently strongly that Andrea is breaching her duties, in attempting to ensure that the partnership stays within her family, in the future.

Expulsion of Julia

Firstly, it is noted that, in accordance with section 25 of the 1890 Act, there is no immediate right for the majority to expel a fellow partner within the partnership. Therefore, it is necessary for Andrea and Catherine to look at the provisions of the partnership agreement, in order to ascertain whether or
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not they have any legitimate way to expel Julia, based on recent events. An alternative would be to look at the dissolution of the partnership and there are certain conditions within the Act which allow for this, although at this stage it is not perceived to be the desirable route and instead both Andrea and Catherine are looking towards the clauses within the partnership agreement, in order to expel Julia. An extract of the partnership agreement, namely clause 20, has been provided and it is recognised that there may be additional clauses within the agreement which have not been seen that could impact on the advice given. However, for the purposes of providing this advice, clause 20 will be looked at.

It is possible for the remaining partners to provide a notice in writing to the partner who is in breach of clause 20, terminating their position within the partnership, if the partner acts in a way that is a breach of their duties, or if they have acted in a way that is contrary to good faith between the partners, such notice may be provided.

In this case, Julia has been convicted of a criminal offence namely drunk and disorderly behaviour, with a recognition that Julia is undergoing difficult personal circumstances. The question here would therefore be whether this conviction is such that it breaches one of the partnership duties, or creates a situation where it cannot be said that Julia is acting in good faith, going forwards. It is suggested that, due to Julia's current level of distress, there is a strong argument that the necessary good faith between the partners has irretrievably been eroded and that clause 20 is then utilised in order to expel Julia from the partnership. In the alternative to taking a litigious approach and given Julia's existing unhappiness with the attempted changes from Andrea, a form of settlement may be possible, or arbitration to resolve the

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situation. It is unclear as to whether these situations are dealt with within the partnership agreement and further investigation is necessary to prevent a potential dissolution or battle in relation to the expulsion of Julia. It is, however, concluded that the actions of Julia are sufficiently severe that they could be used in order to expel her.

Arbitration Clause

As evident above, it would be advisable for the partnership agreement to have some form of dispute resolution mechanism in place. A suggested wording for such arbitration or dispute resolution mechanism is as follows: “ Except as otherwise provided, any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, or the legal relationships established by this agreement, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause.

(a) The number of arbitrators shall be one.

(b) The seat, or legal place, of arbitration shall be London.

(c) The language to be used in the arbitral proceedings shall be English.

(d) The governing law of the contract shall be the substantive law of England and Wales.

33. 2 This clause shall be without prejudice to the rights of any party to seek any injunctive or similar relief from the courts to protect its intellectual property rights, confidentiality obligations, restrictions on the activities of any Partner or former Partner or other rights of any description.”

This offers a dispute resolution mechanism that is both certain and efficient

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in dealing with such disputes and does not require the dissolution of a partnership unnecessarily.

Liability of Michael as Agent

Finally, there is the issue of Michael who did not become a partner who was sufficiently involved at the outset that his name has been placed on stationery. The firm purchased equipment from a personal friend of Michael, based on this personal relationship, with the belief that Michael was a partner in the firm. The question here therefore is whether it is reasonable for the company to be taking action against Michael personally, or whether he was acting as an agent for the firm.

Typically, where an individual is acting as an agent between the firm and the supplier and this is known by supplier, it is the firm that would remain entirely liable for any agreement entered into. However, in this case, it would seem that Michael was acting as for an undisclosed principal and the supplier was not aware that they were in fact contracting with the firm, which was a partnership which did not include Michael. The supplier seemingly believed that he was contracting directly with Michael as a partner within the firm.

When this is the case the third party i. e. the supplier, has a choice as to whether they enforce the contract against the principal, i. e. the firm or the agent, i. e. Michael.

The actual discussion or arrangement with Michael is not clear; however, it is known that Michael had his name on the stationery used to communicate with the supplier. Therefore, it would seem reasonable to suggest that the supplier would have felt they were dealing with Michael personally or at least as part of the firm. On this basis, and with the fact that the supplier is now <https://assignbuster.com/partnership-law-assignment/>

concerned about the financial validity of the firm, it would seem likely that the firm is going to look towards Michael personally to be liable for the contract.

Conclusions and Summary

The position within this partnership remains volatile, with three separate partners all of whom have agreed to the partnership agreement, all having disputes of some nature with each other. Fundamentally, however, in accordance with the Partnership Act 1890, it is necessary for each partner to be acting in good faith and to the overall benefit of the partnership and not on their own account. This standard will need to be borne in mind when looking at Andrea's proposition of bringing on board both of her daughters. There is seemingly little argument in favour of the partnership bringing on board Tina; however, this is slightly less obvious with Helen, as she brings necessary skills to the partnership. The majority of the partnership cannot vote to expel an individual, in this case Julia, unless such conditions are contained within the agreement. According to the extract of the agreement provided, an expulsion is possible where the partner was not acting in good faith. A criminal conviction does not necessarily indicate bad faith and this would be a matter of fact to be determined by the two partners looking to expel Julia. Finally, there is a strong argument that Michael, by virtue of the firm stationery and potentially any discussions with the supplier, will be held personally liable, having acted as an agent for an undisclosed principal.

Bibliography

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