

Partnerships and the absence of a written agreement

The recent Court of Appeal decision in *Natalia Valencia v Norberto Llupar* highlights the risk of a legally binding partnership arrangement arising without any formal written agreement being signed. Although the Court confirmed that no partnership existed in those specific circumstances, anyone considering a potential partnership arrangement should be careful about how those negotiations are conducted to ensure they do not become subject to unexpected obligations. In particular, there is a danger of simply relying on the use of the words “subject to contract” on documents as a way to avoid binding obligations arising.

The Facts

Ms Valencia (Ms V) owned a restaurant and a cafe. Between 29th May and 8th June 2008 Mr Llupar (Mr L) paid Ms V four payments totalling £80,000. The payments were made during the course of negotiations about Mr L potentially taking a stake in Ms V’s business.

Ms V’s solicitors sent letters on 12 June 2008 to Mr L and his solicitors, headed ‘Partnership Agreement- Subject to Contract’. They stated they had been instructed by Ms V ‘in regard to a Partnership Agreement’ with him, and that they intended to prepare a draft agreement for his approval. They requested that he appointed legal representation and should send them money for legal costs. No payment was made by Mr L and no partnership agreement was ever put forward for his agreement.

Mr L starting working for the business. He wrote to Ms V asking for written confirmation of his payments. His letter stated that the contract had not yet been finalised. This was signed by both parties.

After some time working at the restaurant the relationship between Mr L and Ms V deteriorated. Mr L had not been given a key to the premises or access to the accounts. He was not treated as a partner. Eventually he ceased working there and demanded repayment of his money. Ms V however claimed that she and Mr L had become partners at will and that she should not repay the £80,000 to Mr L, as this was his contribution towards partnership assets.

Consequences

It was held that no binding partnership agreement had been entered into. Accordingly, Mr L and Ms V should be restored to their original positions and the money repaid.

It was possible for a partnership to exist before a formal written agreement had been executed. This is the case even where is previous “subject to contract” correspondence. For this to occur the parties must both show by their conduct that they intended that a partnership had been created, notwithstanding the absence of a written agreement. The correspondence between both parties will be crucial when considering these issues.

Here, due to the timing of the 'subject to contract' solicitors' letters after payments were made (and while Mr L was working in the business), it could not be said that Mr L and Ms V acted in a way that converted their 'subject to contract' position into a binding partnership. Accordingly, as the sums of money had been transferred by Mr L in anticipation of a formal binding agreement that did not occur, they should be returned to him.

The Lesson

It is possible for binding legal obligations to be entered into, including partnership obligations, without the existence of any formal written document. This is the case even where there is existing "subject to contract" correspondence which has not been superseded in writing.

Accordingly, commercial negotiations on matters such as partnership agreements do need to be conducted carefully. If the conduct of the parties indicates a partnership has been created, this could be sufficient to establish a partnership at will and impose the rights and obligations of partners on the individuals concerned.

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