Neutral Citation Number: [2025] EWHC 394 (Ch)

Case No: CH-2023-000107

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

Royal Courts of Justice, Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 25 February 2025

Before :

MR JUSTICE RAJAH

- -

Between :

DAVID THAYAPARAN MARIAMPILLAI

Appellant/Defendant

- and –

ANBANANDEN SOOBEN

Respondent/Claimant

- -
- -

John Machell KC (instructed by **David Benson Solicitors Ltd**) for the **Appellant**
Alastair Panton (instructed by **MDL Solicitors**) for the **Respondent**

Hearing dates: 4 December 2024

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APPROVED JUDGMENT

Mr Justice Rajah :

1. This is an appeal by Mr Mariampillai against a decision of HHJ Gerald on 4 May 2023. The judge's decision, after a trial, was that Mr Sooben (the Claimant in the action) and Mr Mariampillai (the Defendant in the action) were in business as solicitors as equal equity partners. Mr Justice Miles initially refused permission to appeal, but granted permission on an oral renewal of the application.

Background

2. On 10 December 2014 Mr Sooben and Mr Mariampillai started up a partnership between them as solicitors in the name of David Benson Solicitors partners. The partnership ended on 7 February 2019.

3. In 2014, Mr Mariampillai had been qualified as a solicitor for just 3 years and could not start his own firm without somebody with greater experience to supervise him. Mr Sooben was at that time a solicitor of some 12 years standing. A business plan stating that the two would be equal partners was used to apply for professional indemnity insurance on 2 July 2014. Once it was obtained, Solicitors Regulation Authority ("SRA") authorisation was applied for on 4 August 2014 and granted on 25 November 2014. Trading began in December 2014.

The Judgment

4. The sole question for the judge to determine was what the nature of the partnership was.

5. He set out the rival positions:

    a. Mr Sooben's case was that there was a 50/50 partnership and that there had been a duly executed partnership agreement dated 30 July 2014 to that effect ("**the July agreement**"). A signed version of that partnership agreement was not in evidence.

    b. Mr Mariampillai's case was that an initial oral agreement that there be a 50/50 partnership was superseded in September 2014 ("**the September variation**") with an agreement that Mr Sooben would be entitled to 100% of the profit costs for work he did or brought in, but he would have no liability for expenses or outgoings and would not be involved in the management of the business ("**the 100% agreement**"). Mr Mariampillai denied that a partnership agreement had been signed and dated 30 July 2014.

6. The judge set out his discussions with Mr Jelf (counsel for Mr Mariampillai) as to the correct legal analysis of Mr Mariampillai's contentions. He said that:
    a. Mr Jelf contended (initially) that the partnership had been converted into Mr Mariampillai being a sole practitioner and Mr Sooben being either an employee or self-employed;
    b. Mr Jelf's position later shifted, after hearing Mr Counsell KC's submissions on behalf of Mr Sooben, to being that the two solicitors had remained partners

and Mr Sooben should be treated as a salaried partner, albeit not liable for expenses or outgoings.

7. For the law, the judge referred to *M Young Legal Associates Ltd v Zahid (a firm) & others* [2006] 1 WLR 2562 at paragraphs 30 and 36 and concluded from the authority cited that the court had to look at the substance of the relationship between the parties rather than any legal labels ascribed to or used by them.

8. The judge identified a number of factors which made this a difficult case, including the following:

    a. Annual accounts had been prepared and signed each year by the parties, and used by each for self-assessment of the tax they were liable for. The judge observed that these accounts did not reflect either side's version of what had been agreed, he expressed surprise that solicitors had signed such inaccurate accounts, and he concluded that he could place limited weight on these accounts.

    b. He also expressed surprise at the absence of email or written communication between Mr Sooben and Mr Mariampillai (and he assumed no other contemporaneous documentation) in 2014, particularly on Mr Mariampillai's case that there had been a fundamental change to the substrata on which the applications for PI insurance and SRA approval had been based.

    c. He noted it was common ground that there had been discussion and an agreement that Mr Sooben would receive 100% of his profit costs and set out the different versions of when and why that agreement was:

        i. Mr Mariampillai said the discussion took place in September 2014 with Mr Sooben making it clear that he no longer wished to make any investment in the business and did not wish to have any liability for partnership debts and liabilities;
        ii. Mr Sooben said the discussion took place well after the partnership started trading and because it appeared that Mr Sooben was not earning sufficient.

    d. He noted that Mr Sooben said for the first time in the witness box that the 100% profit costs were on account of his ultimate entitlement and expressed surprise that again there was no contemporaneous email or other communication recording it apart from the accounts for what they were worth.

9. He observed that these factors undermined the credibility of both Mr Mariampillai and Mr Sooben.

10. He then dealt with the July agreement.

11. He noted that it was common ground that it did not much matter from a legal perspective whether the July agreement had been signed because it was common ground that the oral agreement at this stage was that the two solicitors would be 50/50

partners, and this oral agreement was just as effective as a matter of partnership law. The significance of whether it had been signed or not was, the judge considered, evidential. If it had been reduced to writing, and there was a subsequent variation, then one would expect that the variation would also be reduced to writing, particularly as Mr Sooben and Mr Mariampillai were solicitors.

12. He made his reasoned finding that the partnership agreement had been signed by Mr Sooben at Mr Mariampillai's house and left for Mr Mariampillai to sign which he had done at some point. The judge considered two emails which were produced on the final day of the trial and declined to place any material weight on them when they had not been put to the witnesses.

13. The judge then turned to the September variation. It is the findings of fact in relation to the September variation which are challenged in this appeal. It is important to the appeal to note that the SRA application for authorisation was pending with the SRA at the time of the alleged September variation.

14. The judge made clear that he found this decision a difficult one to make not least because he did not find either witness to be particularly credible. He said:

> "*In this respect, I am unable to accept the defendant's evidence and my reasons for that are as follows. Before giving those reasons I should make it clear that I have found this a very difficult decision to make on the evidence before me, partly for the reasons which I have already referred to, the oddity and inconsistency of some of the documents and the evidence, but also whilst I have accepted the claimant's evidence in relation to the written partnership agreement I did not find him an especially credible witness, but equally, as I have already indicated, in final submissions when the emails of 20 July 2014 emerged the defendant's counsel effectively asked me to ignore the defendant's evidence to the effect that it was effectively a travelling draft of what he had been typing out as negotiations continued, so undermining the defendant's evidence."*

15. He then made his finding that there was no 100% agreement as alleged by Mr Mariampillai. He gave seven reasons which I summarise as follows:

    a. The first reason: the absence of any written record of so fundamental a change was inconceivable. He referred to the existing partnership arrangements as being important to the SRA application and for the SRA to know.
    b. The second reason: it was not credible that Mr Sooben would have walked away from his equity interest in return for 100% of his profit costs, even if he was expecting to bring in more business than Mr Mariampillai. Mr Sooben had a key negotiating position and his involvement was vital to satisfying the SRA requirements. Mr Mariampillai would not have wanted to rock the SRA boat by excluding Mr Mariampillai as an equity partner.

    c. The third reason - absence of any subsequent deliberations about the operation of the 100% agreement – the judge observed that there were many things to be

worked out and no evidence that there was even any thought process as to the consequences of what had been agreed.

d. The fourth reason - the judge found it inconceivable that no notification had been given to the SRA of this material change if it had happened. Having been taken to various SRA rules and regulations he accepted that the September variation was not an impediment to SRA authorisation but found that there was a duty under the rules, and also in common sense, in notifying the SRA of material changes while the application was pending. He rejected Mr Mariampillai's evidence that he had called the SRA and they had said that they were not interested in information about changes in partnership share because the evidence had emerged so late in the day, and he did not believe the SRA would have said such a thing.

e. The fifth reason – which the judge said was extremely important - was that he accepted C's evidence, supported by an admission by D in correspondence, that the partnership was always going to be funded by D, and it was always understood that C could not and was not expected to lend or invest money in the partnership. This removed the alleged "trigger" relied on by D for the September variation.

f. The sixth reason – the troublesome accounts to some extent confirmed that there remained an equal partnership.

g. The seventh reason - Mr Sooben continued to be described in key documentation (a supervisor's standard declaration for of the legal aid agency and report for the Specialist Quality Mark) as an active and "real" partner.

16. The judge noted a number of points which could be made against this finding including:

    a. Mr Sooben had signed the accounts which did not give him 50% of the profits;

    b. Mr Sooben had never complained of not being paid the 50% profits;
    c. There were other points – supposed inconsistencies or admissions in correspondence and the fact that a lease was taken out by Mr Mariumpillai alone;

    d. Mr Sooben's own evidence as to why he entered into his version of the 100% agreement was rather strange.

    On balance none of these points caused the judge to alter his conclusions.

17. The judge concluded that the effect of the 100% agreement was that Mr Sooben was entitled to 100% of profit costs which were effectively paid on account and should be deducted from the 50/50 profit share he would otherwise be entitled to.

Signed July agreement

18. Since permission to appeal was granted, Mr Sooben has obtained from the SRA a copy of a signed partnership agreement. Mr Mariampillai now accepts that he signed the agreement and that his evidence to HHJ Gerald was wrong. Mr Machell KC who appears on this appeal for Mr Mariampillai does not oppose reference being made to that document at this appeal.

19. At the outset of the hearing, I refused an application on behalf of Mr Sooben, and a cross application on behalf of Mr Mariampillai, to introduce further documentation which was not before the judge for reasons I gave *extempore* at the time.

Grounds of Appeal

20. The circumstances in which an appeal court will interfere with a decision of the lower court are set out in CPR 52.21(3):
"The appeal court will allow an appeal where the decision of the lower court was—
(a) wrong; or
(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."

21. Mr Machell relies on both limbs. He advances two grounds of appeal.

22. The first is that the Judge's fact-finding exercise was undermined by three errors:

    a. The partnership error – that the 100% agreement affected Mr Sooben's status as a partner of the partnership;

    b. The SRA error – that the 100% agreement was relevant to the pending application for SRA authorisation and should have been notified to them;

    c. The accounting error – that the accounts "to some extent" confirmed that there remained an equal partnership.

23. The second ground of appeal is that there was a procedural irregularity that rendered the trial unfair. The primary irregularity relied upon is the judge's intervention in cross examination, supplemented by his alleged hostility to Mr Jelf and his arguments.

Ground 1 – flawed approach to the evidence

The law

24. It is well-settled that the appellate court regards the fact-finding exercise as within the domain of the trial judge. An appellate court will not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached; see *Volpi v Volpi* [2022] EWCA Civ 464 at [2].

25. In *Henderson v Fosworth Investments Ltd* (SC(Sc)) [2014] 1 WLR 2600 Lord Reed summarised the appellate court's approach at paragraph 67:

"*It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot be reasonably explained or justified".*

26. The Appellant says that the Judge's fact finding proceeded on the basis of three identifiable and interrelated errors; the partnership error, the SRA error and the accounting error. If that is correct he must also show that the key findings of fact (that there was no September variation and that Mr Sooben and Mr Mariampillai remained equal equity partners) were, as a consequence, wrong, or at least unsafe.

The partnership error

27. I accept Mr Machell's submissions, which were not challenged by Mr Panton, that:
    a. Mr Mariampillai's case in his pleadings, in his trial skeleton argument, and in his witness evidence, had always been that Mr Sooben was a partner from December 2014 until February 2019;

    b. The 100% agreement, and the fact that Mr Sooben may thereby have had no equity share or share of the profits, provided no legal impediment to Mr Sooben continuing as a partner if that was what was intended.

28. The judge was not, however, wrong to say that Mr Jelf's initial position was that Mr Sooben had ceased to be a partner on the making of the 100% agreement. Mr Jelf did so accept in his closing submissions on 3 May. He clarified his position the next day, under pressure from the judge for equivocating, that Mr Sooben was effectively a salaried partner.

29. To the extent that the judge assumed that the effect of the 100% agreement, if it had been made, necessarily meant that Mr Sooben was no longer a partner (and merely being held out as one) that was an error; see paragraph 45, 46, 58 and 59 of the judgment.

The SRA error

30. Mr Machell took me through the relevant parts of the SRA Authorisation Rules 2011, the Glossary and the Practice Framework Rules. I accept his submissions on the effect of these provisions, which Mr Panton did not challenge:

    a. the SRA authorisation process is directed at qualification and fitness;

b. the 100% agreement was not relevant to the SRA authorisation process if Mr Sooben remained a partner after it was made;

c. the 100% agreement was not a material change which needed to be notified to the SRA;

d. the reference in the SRA authorisation (which was before the court) to "owners" of the firm was a reference to its partners whether or not they had an interest in the equity of the firm.

31. To the extent that the judge considered that there was a duty under the rules to notify the SRA of the 100% agreement if it had been made, or that it was relevant to the SRA authorisation process, that was an error; paragraphs 38, 39 44-46 of the judgment.

The accounting error

32. Mr Machell took me through the accounts and invited me to conclude that they are a "score draw" because they are inconsistent with both sides case. This seems to me to be precisely the sort of invitation that an appellate court should decline to accept. The weight to be given to the accounts, and whether in favour of one or other party, were matters for the trial judge.

The attack on the judge's reasons

33. Mr Machell accepts that it is not sufficient to identify errors made by the judge. He needs to demonstrate that the judge's findings of fact that there was no September variation have been so undermined as a consequence that the judgment should be set aside and the case remitted for a retrial. He has therefore launched a carefully targeted attack on six out of seven of the judge's reasons.

<u>The first reason - inconceivable that the fundamental change was not recorded in writing (judgment paras 38-39)</u>

34. Mr Machell says that this reason is undermined by the SRA error.

35. The point the judge was making was, if I may say, an obvious one. The 100% agreement represented a fundamental change in the deal recorded in the signed partnership agreement. One would have expected that fundamental change to be recorded in writing to show that position as set out in the signed partnership agreement no longer accurately reflected the rights of Mr Sooben and Mr Mariampillai. One would have expected solicitors, in particular, to have required a written record.

36. In paragraphs 38 and 39, the judge refers to the SRA application having been made on the basis of the signed partnership agreement as another reason why one would have expected these solicitors to have recorded a variation in writing. I am not convinced this engages Mr Machell's SRA error, but to the extent that the judge was influenced

by it, it does not seem to me to undermine the substantive point he was making in the first reason.

The second reason - not credible that Mr Sooben would walk away from his equity share

37. This point is untouched by any of the three alleged errors.

38. The judge said in paragraph 41 that it was inconceivable that Mr Mariampillai would have wanted to rock the boat by excluding Mr Sooben as an equity partner while the SRA authorisation application was pending. This seems to me to be a different point to the second reason. That is an assessment by the judge of Mr Mariampillai, his character and his knowledge and how human beings ordinarily behave. Again, I do not think the SRA error can have been a significant influence.

The third reason – the absence of any deliberations about the consequences

39. This point is untouched by the three alleged errors. The judge refers in paragraph 42 to Mr Jelf's first submission to make the point that the effect of the 100% agreement was that the business belonged to Mr Mariampillai alone and postulated the consequences of that. At paragraph 43 there is further reference to Mr Jelf's first submission, but only to articulate the fundamental shift which the 100% agreement undoubtedly would have represented and the consequent need to discuss how it be treated in the accounts.

The fourth reason - inconceivable no communication with SRA

40. I accept Mr Machell's submission that this reason is underpinned by the SRA error. The judge thought that it was common sense, as well as a duty under the rules to notify the SRA, but it seems to me that the two are intertwined.

41. Less clear is whether the judge would not have rejected Mr Mariampillai's evidence of a phone call with the SRA if he had not been operating on the basis of the SRA error. It is clearly a factor in his rejection of Mr Mariampillai's evidence, but the judge heard and saw Mr Mariampillai give evidence, he formed a dim view about Mr Mariampillai's credibility (he correctly disbelieved his evidence that he had not signed the July agreement) and he was unimpressed with this evidence conveniently emerging late in the day.

The sixth reason - accounts to some extent confirm an equal partnership

42. As I have said in relation to the alleged accounting error, the weight to be placed on the accounts, and the different parts of them, were matters for the judge. In any event, this and the seventh reason are clearly makeweights.

The seventh reason – key documentation describes the claimant as an active partner

43. I accept Mr Machell's submissions that the points made here by the judge involve the partnership error, but this reason is clearly a minor point.

The fifth reason which is not attacked

The fifth reason - that it was agreed that it was Mr Mariampillai who would provide the business capital, not Mr Sooben. There was therefore no "trigger" for the conversation in September 2014 as alleged.

44. Mr Machell did not attempt to attack this reason given by the judge. This reason is the reason singled out by the judge as "*extremely important*".

45. Over five paragraphs the judge analyses the evidence and concludes that the arrangement between Mr Mariampillai and Mr Sooben had always been that Mr Mariampillai would provide the start-up capital by way of loan. In doing so he accepted the evidence of Mr Sooben. He noted that Mr Mariampillai had admitted as much in correspondence and he rejected the evidence of Mr Mariampillai trying to explain this away as a typographical error. This meant that the ostensible reason according to Mr Mariampillai for the September variation, namely Mr Sooben's unwillingness to put money into the partnership, fell away.

46. Mr Machell accepted that this reason is entirely unaffected by the three alleged errors and made no attack on this reason. This is significant because this reason on its own seems to me to be fatal to Mr Mariampillai's case on the September variation. The judge has identified this reason as very important. Unlike the other six reasons this one is not one which goes into the scales to weigh the balance of probabilities as to whether or not the September variation occurred. It is on its own a complete rejection of Mr Mariampillai's case. The judgment could have referred to this reason alone.

47. I do not therefore consider that the errors undermining the fourth and seventh reason make the judge's key findings of fact (that there was no September variation and the solicitors remained equal equity partners) either wrong or unsafe.

48. I have considered whether the SRA error and partnership error could have skewed the judge's approach to all of the evidence such that he wrongly rejected Mr Mariampillai's evidence in relation to the fifth reason and accepted Mr Sooben's. Mr Machell relies in particular on Mr Mariampillai's evidence of a telephone call with the SRA which the judge found did not happen. Mr Machell says that if he had not made the SRA error the judge might have accepted Mr Mariamipillai's evidence about this telephone call. That in turn would have been evidence which was consistent with there having been the September variation. However, we now know that Mr Mariampillai's evidence about not signing the July agreement was false evidence which he maintained throughout the trial (and into his grounds of appeal and initial skeleton argument). It is fantasy to suggest that the judge, if he had known this, would have preferred Mr Mariampillai's evidence to Mr Sooben's. It seems to me that the discovery of the signed July agreement, vindicating the judge's finding of fact on this issue, would have had a much more serious impact on the judge's findings than the SRA error and partnership error, and they would have reinforced his conclusions.

Conclusion on Ground 1

49. I accept that the judge has made errors but I am not satisfied that the errors made have so undermined his reasoning and findings of fact that his conclusion is wrong or unsafe.

Ground 2 – procedural unfairness

50. It is well-established that in our adversarial system the judge is required to rise above the conflict and not compromise his impartiality and neutrality by descending into the arena; *Yuill v Yuill* [1945] P 15, *Southwark LBC v Kofi-Adu* [2006] EWCA Civ 281.

51. Mr Machell's focussed point is that in this case the central issue was the basis on which it was agreed that Mr Sooben would have 100% of profit costs and whether that supplemented the 50/50 agreement. He says that the transcript shows that the judge took over the cross-examination of Mr Sooben at a crucial moment and elicited with leading questions the evidence which he eventually accepted – that 100% of profit costs paid to Mr Sooben were effectively paid on account of his profit share.

52. He also says that the judge was hostile to Mr Jelf and unwilling to hear submissions in reply from him in relation to the partnership error and the SRA error. He accepts that these points on their own are not sufficient to affect the fairness of the trial, but he relies on them to bolster his submission that the judge went too far.

53. I have read the transcript.

54. I do not think the judge overstepped the mark or descended into the arena in relation to the cross examination of Mr Sooben. The judge's intervention were intended to help Mr Jelf with a witness who did not seem to understand his questions. The judge put the questions which Mr Jelf himself was trying to ask in a clearer form. They were open questions. He did not lead the witness until the witness had twice confirmed his version of the 100% agreement at which point the judge clarified how this worked with a worked example.

55. I do not think the criticism of the judge in relation to an alleged unwillingness to hear submissions in reply from him in relation to the partnership error and the SRA error are as clear cut as Mr Machell suggested. The judge gave Mr Jelf leeway as to what were properly matters for reply but a line had to be drawn somewhere, and Mr Jelf's opponent was at times objecting to him continuing.

56. As for the hostility and other criticisms of the conduct of the judge, I understand a complaint to Judicial Conduct Investigations Office has been upheld. That is the appropriate course for conduct below the standards expected of a judge. I am not concerned with that. I am concerned with whether the conduct amounted to an irregularity which made the trial unjust. In my judgment it did not.