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Introduction

It is often the case of that people engage in commercial enterprises without necessarily realising that they are at law partners with all the legal ramifications which flow from such illegal relationship.

It is also often the case that these people's conduct their enterprise was only written agreement reflecting the terms of their arrangement. Whether they know it or not, if they are carrying on a business in common with a view to profit at law they are deemed to be partners and are subject to the Partnership Act.

The personal liability of each member of the firm to creditors is unlimited. The partners are jointly liable for contracts committed by any partner of the partnership. Moreover the estate of the deceased partner is liable severally on such obligations incurred before the partner's death. Partners are jointly and severally liable for liabilities arising out of torts committed by the partners.

Many partners of partnerships are often uncertain as to what happens when a partnership has problems and the various ways in which those problems may be resolved by litigation or other dispute resolution methods.

I have recently been reading a most interesting book about the Beatles and it occurred to me that their legal arrangement and the ultimate breakup might be an interesting place to start in looking at what happens when partnerships go wrong. Prior to April 1967, and George Harrison, John Lennon, Paul McCartney and Richard Starkey were partners at will in the band known as the Beatles. This meant the agreement to work together could be terminated by any of them at any time. However on the 19th of April 1967 a partnership deed was entered into in which the Beatles agreed that their partnership would continue to a period of 10 years the name of the firm being "the Beatles and co-".

Apple Corporation Ltd was also bought into partnership with an 80% interest in the capital and profits of the partnership, with Apple agreeing to pay the sum of 800,000 pounds to be a partner. In effect the Beatles were in partnership with their own company. The partnership agreement gave the company the right to manage the business of the partnership and exploit the assets of the partnership as profitably as possible. The agreement further provided that "proper books of accounts should be kept by the partnership" and that on the 31st of each year a balance sheet and profit and loss statement for the year ending was due to each partner.

At the time of entry into the partnership agreement it was contemplated that the Beatles long-time manager, Brian , would be in charge of their affairs. However Brian Einstein died in August 1967 and the Beatles financial affairs became even more

complex. A ball became a fully operational company and proceeded to lose money at an alarming rate. In early 1969 John Lennon remarked that if things continued with their financial affairs as they had been going, the Beatles would be broke within six months. This statement caught the eye of all one New York lawyer, Allen Klein. Klein was an American involved in the music publishing an artist management business and heard also acted as an agent for the Rolling Stones. Klein's company was called ABCKO. On the eighth of May 1969 a contract was entered into between ABCKO and Apple. John Lennon and George Harrison as directed at all signed the agreement on behalf of Apple and John Lennon, George Harrison and Ringo Star engaged Klein is there personal manager. Paul McCartney never signed the contract with Klein.

Klein met with mixed success is the Beatles manager. He was able to renegotiate existing recording agreement with Capitol Records to the United States, Canada and Mexico. However he failed to acquire control of the Beatles publishing rights from Northern Songs,.

By 1970 it became apparent the Beatles were not going to be recording again and the individual partners were engaged in producing their own solo efforts.

It became apparent by the end of 1968 that there was a serious problem with regard to the Beatles paying a large provisional tax bill. Up until that time, the accountants for the Beatles had been unable to produce any account for the period subsequent 31st of March 1968.

Accordingly Paul McCartney and his advisers felt it necessary to issue proceedings in the High Court of Justice, Chancery Division in London. McCartney Had Named As Defendants the Other Partners in His Business Being John Lennon, George Harrison and Ringo Star although it was clear that his real target was Allen Klein. McCartney Sought to Basic Remedies. First he asked that a receiver be appointed to act as a caretaker of properties and interests in which the Beatles were involved. Second he asked that an accounting of the Beatles financial condition be made by someone hired by the receiver. The aim was to have someone other than the current staff at Apple run the affairs of Apple and get the financial records in order. It was clearly McCartney's position that the Beatles were no longer a functioning band and a receiver would have the primary duty of collecting payments from various sources based on the work the Beatles had produced up to that time.

McCartney bore the burden of proof that such extreme step was necessary. After all, he was asking a judge to intervene in business contracts that had been entered into voluntarily by all involved in rest of the control of the company away from the majority of the parties to the contract only John Lennon, George Harrison and Ringo Star.. McCartney claimed that work without a trust with the receiver in charge the assets of the Beatles were in jeopardy to stop there were seven areas McCartney claimed demonstrated that the partnership assets were being misused or improperly accounted for stop

It was also incumbent on McCartney to show that it was likely that a court hearing for case would eventually agreed that a dissolution of the partnership was appropriate. In addition, McCartney claimed that his artistic freedom was being curtailed by his partners to such an extent that it amounted to unfair dealing between the partners.

McCartney's counsel was able to establish that Allen Klein had received excess payment of commissions on royalties from various sources. They then establish that there had been numerous breaches of the partnership agreement. They then establish that the accountants were unable to prepare accounts without the full Corporation of Klein. Significantly they then turned to the state of the financial affairs of the partnership and it appeared that the Beatles were not be able to meet their tax obligations.

McCartney's motion for a receiver was granted to stop the judge did not have to rule on all the points raised by McCartney to do so and sent his decision which was temporary in nature on the ledge must conduct of Klein. The judge found that there was a likelihood that the assets of the partnership would be jeopardised if the business continue to operate in the manner in which it had for the prior months and found that the partnership would probably be dissolved due to the conduct of the defendants stop

You may recall that McCartney was pilloried for his decision to take legal action however in hindsight he really had no alternative and it is unsurprising that he did not do so earlier. Although criticised by John

Lennon for breaking up the Beatles, in fact it was John Lennon who had earlier announced that he was leaving the band to pursue a solo career.

Case study

A colleague of mine has recently been through a partnership dispute which ended up in court. It was a bitter and expensive dispute amongst lawyers and I asked him to provide some insight to the experience which he had been through and how he might have done things differently. He made these points:

1. Take care with the preparation of the firm's accounts. Often partners will adopt accounting techniques such as interposing service trusts which may distort the reality.

2. Record all major decisions in writing that involve the expenditure or advance of moneys by onto the practice. The courts will place greater weight on contemporaneous diary notes created by a partner.

3. Pay serious attention to the contents of Partnership Agreement. Treated as a work in progress that should be subject to constant review is the practice grows or as circumstances change. Were one or more partners are not really Expo in matters such as tax structures, valuation methodology except to engage the services of an outside consultant or accountant to advise on the suitability of arrangements that everybody in.

4. Have the firm's accounts prepared by an independent accountant who ate all the partners.

5. Don't leave one partner in charge of everything and relied him to do the right thing in the belief that what he does will be good for all the partners.

6. Have very clear exit and valuation provisions set out in the Partnership Agreement for the retirement or removal of a partner. This can take all the extra way it is properly covered up front before it becomes a live issue.

So what happens when the partnership in breaks down and action needs to be taken.

Appointment of a receiver

The first division is the appointment of a receiver. This may be governed by the terms of the punishment agreement or alternatively one of the partners may apply to the Supreme Court equity division and the appointment of a receiver stop the basic purpose of the appointment of a receiver is to protect or preserve property. The applicant must show our threat of danger or jeopardy to the partnership property. The motor preservation is preservation or to be granted is in the discretion of the court and it may be sufficient to

preservation be by way of injunction rather than by way of receiver. The general rule is that where the partnership is already dissolved or where it is clear that dissolution of an admitted partnership will be granted on the hearing the plant is used in title to the appointment of interim receiver. The appointment may be refused if such appointment would be ruinous to the business or assets partnership or if the expenses associated with the appointment would be disproportionate to the nature and value of the partnership business.

The approach of the judges in the equity division of the Supreme Court has generally to try and persuade the parties to reach some agreement respect to the ongoing conduct of the partnership without the need to the appointment of a receiver. Example Accord might defer the point of a receiver and instead order that an account to be taken and an inquiry be held in relation to the partnership and to this end appoint a referee (usually an accountant) to conduct such an inquiry and report to the court so that the parties are better appraised of their respective positions on the desirability of winding up the partnership by Mitchelton rather than the employment of receiver. However, if the plaintiff persists with the application for a receiver he or she will usually be entitled to one as of right.

Prior to the solution to a receiver may be appointed where there is a danger to partnership assets. This conduct by a partner is not of itself a ground for the appointment of a receiver that may be appointed where the misconduct jeopardises the partnership assets.

Where the existence of the partnership is in dispute, older authorities suggested a receiver will not be appointed. However there is no general rule of practice.. Similarly, where there is real doubt that the partnership will be dissolved at hearing the court is reluctant to appoint a receiver. However a receiver might be appointed pending resolution of the dispute between the partners.

Application for appointment

Ex Parte applications to be very ex parte application is the appointment of a receiver are not granted except in the case of emergency. The applicant must show that there is an immediate and real danger that the defendant is about to commit some act the material prejudice of the applicant or creditors of the defendant and that there is strong evidence that time is taken to give notice to the defendant in that act will be committed. The other applicant must make full disclosure of the potential prejudice to the defendant of the appointment of a receiver. The court will waive the potential prejudice to the applicant against the potential prejudice to the defendant. An undertaking as to damages is usually required of the applicant. And ex parte application should be made by summons together with a notice of motion seeking the relevant interlocutory relief. In cases where the partnership agreement is not in writing or where there are likely to be forgiving disputes of fact to Italy where it is alleged that the partnership agreement has been varied by conduct all in orally proceedings should be instituted by statement of claim

and directions sought to provide to the orderly conduct of the dissolution.

The applicant will need to consider what other relief it seeks before deciding which division of the Supreme Court the release should be filed in. Usually the application should be made to the registrar or in extreme urgency to the associate of the Chief Judge or the duty judge of the relevant division

The applicant will lead to file an affidavit in support of the application to opposing to all the relevant facts and the reason is that the property is in jeopardy or other reasons why it is just a convenient to appoint a receiver.. the proposed receiver should consent to the appointment and there should be verified by the affidavit of the applicant for some

Two affidavits of fitness will be required in all cases except where the proposed receiver is an official liquidator who has indicated to the court that he or she is prepared to act in any liquidation.

The receiver is an officer of the court and has appointed on the heart of all persons interested in the property. The order of appointing a receiver operates as an injunction restraining other parties to the action from interfering with a receiver getting the properties and dealing with his appointment.

The partners should be aware that the appointment of a receiver effectively takes the business of the partnership out of their hands and they lose control of the partnership business. Furthermore, the receiver and/or the court may impose decisions upon the partners which they may not like. The costs of the receiver will be paid out of the partnership assets and the receiver's costs can be very substantial.

The court will usually order accounts and inquiries be taken at the time of dissolution. They will rarely be ordered during the continuation of the partnership. Section 42 (1) of the Partnership Act provides that where the firm continues to use the assets of the partnership after the date of dissolution of the outgoing partner should be entitled to a share of profits made since the dissolution that are attributable to the use of the outgoing partner's share of the assets or at an interest rate of the rate of 6% around on the amount of the partner's share of the partnership assets. The first alternative of the section is often very difficult to calculate and it would be more usual to seek the statutory interest.

The sale after dissolution

Subject terms the partnership agreement, the partnership assets must be converted into money. Frequently the partnership agreement will contain a provision whereby an option is granted to

members of the partnership to acquire partnership property uncertain terms.

An alternative to an application for an appointment of a receiver is an application for an injunction to preserve particular assets or to restrain a partner from interfering with the business or whether goodwill has been sold to restrain a former partner from carrying on business under the old firm name.

Outgoing partner's obligations for accident contracts of the partnership business on the extent to which insurance may protect an outgoing partner.

Defining partnership property particularly where one partner contributes a capital items such as intellectual property or physical asset and another partner is providing services.

Consider also the situation where a partner carries on a business outside the partnership and whether such activities might be caught by the terms of the partnership agreement. For example when the Beatles were in partnership and producing their solo records an argument arose out of whether the proceeds of sale of fair solo work should be considered partnership assets.

Who will get the name of the partnership business after dissolution. This has been a continuing source of dispute between the members of Little River Band. Ironically, the main members of Little River band

lost control of the name and go under the name Shorrock and Bertles.