



## Age, Partnerships and Undue Influence

A partner who has been forced or coerced into putting valuable personal property into a partnership may be able to convince a court to dissolve that partnership to retrieve some or all of the value. However, simply alleging old age and dyslexia is not enough to convince a court that the transfer was improper. A cynical attempt to recover property in this way based upon gender, age and a 'sob story' was rejected by the Court in *Brown v Stephenson*.

Partners or 'would be partners' in partnerships where assets have been contributed by the members should consider carefully the terms on which they agree those assets will be held.

### Assets in a Partnership

Assets transferred to a partnership are legally held by all partners jointly. Hence even if the asset - for instance farmland or a trading or residential building - previously belonged to one partner, once it is contributed to the partnership it becomes (beneficially) the property of all partners. If the partnership later breaks up or the contributing partner disagrees with the use proposed by the others, he or she cannot (subject to alternative agreement) simply take the asset back. If he or she leaves the partnership, the asset may well stay behind with the other partner(s).

This means both that clear documented agreements should be reached at the start of any partnership on the rights of all parties and that partners seeking to exit a partnership need to be cautious and properly advised about what the effect of their departure will be on the partnership assets.

### Undue Influence

This is not, however, an open invitation to confidence tricksters to enter partnerships with vulnerable individuals. Where assets are transferred by coercion or due to undue influence on a confused individual, the Court has the power both to unwind the transfer and/or to dissolve the partnership and order how the assets should be distributed to the former partners.

Undue influence, however, has to be more than simply a bad deal entered by someone who might fall into an ostensibly 'vulnerable' class (see box). Primarily, the Court will uphold commercial decisions made by individuals acting in their own interest who have the capacity to understand them and will not undo agreements simply because they later turn out to be bad bargains.

To establish actual undue influence a claimant must show:

- that the other party to the transaction (or someone who induced the transaction for his own benefit) had the capacity to influence the complainant;
- that the influence was actually exercised;
- that its exercise was undue (meaning inappropriate);
- that its exercise brought about the transaction.

This was recently illustrated by the Court's judgment in *Brown v Stephenson*.

### Brown v Stephenson

A partner in her 70s asked the High Court to set aside a partnership on the grounds that she was a victim of undue influence because she was old and therefore vulnerable. The Court found that the woman, although in her 70s, was both active and had commercial expertise which meant that she was not vulnerable and could not rely on age to claim undue influence.

Mrs Brown owned and ran an 11 acre farm and wanted to develop a barn valued at £45,000 on her land to live in (she was living in a caravan). However, she lacked the capital or skills to convert the barn. Mr Stephenson was a builder who was interested in the renovation work. Rather unusually, Mrs Brown decided that the best way to team up with Mr Stephenson was to enter into a partnership with him. They agreed that Mr Stephenson would invest £22,500 in the partnership, undertake the works and, in return, would get a 50% stake in the land and business (which Mrs Brown would contribute to the partnership). Together they obtained legal advice and transfers were executed in July 2003 putting the barn and land into joint names (although due to an oversight on the part of the lawyer, the transfers were never registered). By November 2003 the partnership agreement was signed and both parties were living in the property, which was divided into two separate living areas.

By 2004 Mrs Brown found herself in debt and Mr Stephenson became concerned that her creditors might try and enforce her debts against her share of the partnership i.e. the property. By this time Mr Stephenson had invested significantly in the property, including paying for a boundary dispute that had occurred. The parties sought legal advice in the later part of 2004 and early 2005 on various methods of protecting the property from creditors.

In January 2005 Mrs Brown retired from the Partnership with an option to return at any time. On the same day she executed a will in favour of Mr Stephenson. Subsequently she transferred all the land adjoining the barn into Mr Stephenson's sole name as payment for the work he had done to the barn. Both partners sought legal advice in relation to the later transfer. Mrs Brown was advised several times by her lawyer that he did not recommend the transfer as it could affect the saleability and mortgageability of the barn and advised that the transfers were not in her interest. Mrs Brown's lawyer also advised her that the transfers could result in a Declaration of Trust in respect of the barn so as to vary the interests to a 90/10 split in favour of Mr Stephenson. Nonetheless, despite this advice, Mrs Brown agreed to proceed.

Subsequently, Mrs Brown received a notice from SAGA suggesting that an equity release scheme could solve her financial worries. She took this idea to Mr Stephenson who rejected her proposal. At the same time Mrs Brown explained she had changed her mind and no longer wanted to vary the interests to a 90/10 split in favour of Mr Stephenson. She said she had agreed to this arrangement before she realised the consequences.

Mrs Brown argued that she had only retired from the partnership under extreme pressure (aggression and bullying) from Mr Stephenson and had only signed the various transfers because she was dyslexic, suffered medical problems, was under financial pressure and thought they were to be "under the counter", by which she meant not enforceable. She asked the Court to dissolve the partnership. Mr Stephenson disagreed and pointed to the legal advice, the transfers of land and the executed partnership deed. He said that the land had been transferred as payment for all the work he had done on the property. The evidence from the lawyer agreed with Mr Stephenson and made it clear that he had obtained approval for the transfers from both partners.

## Refusing to Undo Mrs Brown's Mistake

The Court found for Mr Stephenson. Although the Court recognised that the deal was a good one for Mr Stephenson, whose compensation derived from owning a share of the business, it was not so generous that it could not be reasonably accounted for. It was also not persuaded that Mr Stephenson had exercised undue influence to bring about the setting up of the partnership or the transfers.

The Court found Mrs Brown to be an active lady with commercial expertise who had run a business for some time, including dealing with all the accounts for the partnership. It was not convinced she was vulnerable and found that her refusal to agree to an interest split of 90/10 demonstrated this. Consequently, she could not escape the commercial deals she had willingly and knowingly entered into simply because of her age.

## Conclusion

Individuals who enter a partnership are joining a fundamentally commercial business arrangement. They are expected to act with commercial judgment and to live with their decisions. Although the breakup of a partnership can be fraught and emotional, parties must take a rational approach to protecting their interests throughout.

It is also questionable that a partnership for the development of a residential building for both parties to live in, is a sensible or practical legal structure to adopt.

## Contacts

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