

Dr Sonnie Lie v Dr Rajan Mohile

Case No: B2/2013/0554

Court of Appeal (Civil Division)

24 October 2013

[2013] EWCA Civ 1436

2013 WL 5730224

Before: Lord Justice Rimer

Date: Thursday, 24 October 2013

On Appeal from Central London Civil Justice Centre

(HHJ Taylor)

Claim No: 1BQ00442

Representation

Mr Oluwaseyi Ojo (a solicitor advocate with Taylor Wood Solicitors) appeared on behalf of the Applicant.

Mr Martin Palmer (instructed by Attwood & Co) appeared on behalf of the Respondent.

Judgment

Lord Justice Rimer:

1 This is an appeal by the claimant, Dr Sonnie Lie, against the dismissal with costs of his claim by an order made by Her Honour Judge Taylor in the Central London County Court on 1 March 2013. The defendant/respondent is Dr Rajan Mohile.

2 Dr Lie's claim was an application for a new tenancy under Part II of the Landlord and Tenant Act 1954 . It arose against the background of a breakdown in the relationship between the parties, who were and still are in partnership as medical practitioners, providing medical services from premises known as Chadwell Medical Centre, 1 Brentwood Road, Chadwell St Mary, Essex ("the property"). The partnership is governed by an agreement of 15 July 2002. The parties are the only partners, and Clause 3 provided for the practice of the partnership to be carried on from the property, as it was. Clause 2(ii) provided, so far as material, that:

"Subject to the provisions for retirement, expulsion and dissolution hereinafter contained, the partnership shall continue during the joint lives of the parties hereto or any two or more of them ... "

3 The partners provided general medical services under a personal medical services contract they had entered into with the South West Essex Primary Care Trust. It was a condition of the contract that the services could only be provided from the property. The property is owned by Dr Mohile, and he granted a periodic tenancy to himself and Dr Lie as partners at a rent that was paid by the PCT. Dr Mohile originally disputed that any such tenancy had been created and had asserted that Dr Lie had at most a licence to occupy the property. That argument is, however, no longer alive. The judge held that the partners did have a tenancy, and Dr Mohile does not now contend otherwise.

4 The partners fell out in 2011, and on 3 June Dr Mohile served two important documents on Dr Lie. One was a notice purporting to dissolve the partnership on, at the latest, 6 December 2011. The other was a notice, given also to himself, under section 25 of the 1954 Act terminating the tenancy of the property on 1 January 2012. That notice informed Dr Lie that Dr Mohile opposed the grant of any new tenancy and that he would oppose any application that Dr Lie might make for a new tenancy

on the ground provided in section 30(1)(g) of the Act, namely that he wished to continue his medical practice from the property and required the same for his own use.

5 On 8 July 2011 Dr Lie issued an application in Basildon County Court for the grant of a new tenancy of the property. He asked for a new 15-year term on a full repairing basis, with the rent to be determined by the district valuer. In his defence, Dr Mohile raised various matters to which I need not refer, but also advanced his opposition to the grant of any new tenancy on the ground that he wished to continue the practice of the partnership at the property as a sole general practitioner, being a practice in which he did not wish Dr Lie to have any part.

6 The claim came before Judge Taylor in the Central London County Court over three days at the end of February 2013, and the judge delivered her judgment on 1 March 2013. Her judgment was an oral one, and as the recording equipment was not functioning there is no transcript of her judgment. We have, however, been provided with an approved note of it.

7 The judge identified the issues she had to decide as including (i) whether the partnership had a tenancy of the property; (ii) if yes, did the tenancy terminate upon the dissolution, or purported dissolution, of the partnership effected by the notice expiring on 6 December 2011, and (iii) if it did not so terminate, was Dr Mohile entitled to oppose Dr Lee's application for a new tenancy?

8 As to issue (i) the judge held that the partnership had a business tenancy of the property and no issue arises as to that. As to issue (ii), she held that the partnership was not one for a "fixed term" within the meaning of section 26 of the Partnership Act 1890 and that it was therefore open to Dr Mohile to terminate the partnership by the notice he gave, with the consequence that the partnership was dissolved on 6 December 2011. The judge held that it followed that, as the partnership was the tenant of the property, the termination of the partnership automatically also brought its tenancy to an end. She held that Dr Lie was not personally entitled to a new tenancy. She finally noted that "[Dr Mohile] is entitled to oppose the application on the basis that the partnership is no longer in existence and [Dr Lie's] application must fail" and be dismissed.

9 By his appeal, brought with the permission of Lloyd LJ, Dr Lie asserts that the judge was wrong to hold that section 26 of the Partnership Act 1890 entitled Dr Mohile to terminate the partnership by notice and was therefore wrong to hold that the partnership's tenancy had come to an end with the expiry of that notice. Dr Lie's case is that the tenancy was continuing and that he was entitled to the grant of a new tenancy. Dr Lie goes so far, in the skeleton argument prepared by his advocate, Mr Ojo, as to submit that the judge must be taken to have decided implicitly that Dr Mohile's opposition to the grant of a new tenancy was not made out and that this court can and should, in the interests of proportionality, grant a new tenancy here and now.

10 Dr Mohile's position, as presented by Mr Palmer, is that he concedes that the judge was wrong in her holding that section 26 of the Partnership Act 1890 entitled Dr Mohile to terminate the partnership by notice. He now accepts that it did not, and that therefore the partnership was and is still continuing. Mr Palmer's submission in his skeleton argument, although he did not develop it orally, was, however, that although the judge did not make an express finding that Dr Mohile was entitled to oppose the grant of a new tenancy on section 30(1)(g) grounds, it was implicit in her judgment that she had so found.

11 We are therefore faced with the position in which, whilst each party acknowledges that the judge made no express finding in support of that party's case with regard to Dr Mohile's opposition to the grant of a new tenancy, each also says that the judge made an implied finding in his favour. The short answer to these rival submissions is that it is obvious that the judge not only made no express finding as to the soundness or otherwise of Dr Mohile's claimed ground of opposition, she plainly made no implied finding either. Her simple, but wrong, point was that, as the partnership was at an end so also was the tenancy, and the claim fell to be dismissed. The consideration of the question as to Dr Mohile's opposition to the grant of a new tenancy did not therefore arise for determination and would only have so arisen if she had found that the tenancy had continued after the expiration of the termination notice. As she did not so find, she did not consider the question and she made no finding upon it, even though, as we were told, the question had been fully canvassed during the hearing.

12 In the result, I would reject both parties' invitations to the court as to how it should dispose of this appeal. Dr Lie's invitation us to find as a fact that Dr Mohile's as yet undecided opposition to the grant of a new tenancy can have no prospect of success is one that I have no hesitation in rejecting. This court is in no position to make any finding as to that, and Dr Mohile's invitation to us to find that the judge has already decided the point in his favour is simply and obviously wrong.

13 Before leaving this case, I add that the court raised with the advocates whether any consideration below had been given to Dr Lie's entitlement to apply alone for the grant of a new tenancy or whether, formally, the provisions of section 41A of the 1954 Act required any such application to be made by both business tenants. We were told that no consideration had been given to that point, and so I shall say no more about that. It is not an issue that is before this court for decision.

14 I would allow the appeal, set aside paragraphs 1 and 3 of the judge's order, and remit the case to the county court for a rehearing Dr Lie's application for the grant of a new tenancy.

Lord Justice Christopher Clarke:

15 I agree.

Lady Justice Sharp:

16 I also agree.

Order: Appeal allowed

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