Dr Sonny Lie v Dr Rajan Mohile

Appeal Ref: CH/2014 /0485

High Court of Justice Chancery Division

5 February 2015

[2015] EWHC 200 (Ch)

2015 WL 376116

Before: Mr Justice Birss

Date: 05/02/2015

On Appeal from Her Honour Judge Walden-Smith Sitting In the Central London County Court

Hearing dates: 4th December 2014

Representation

Mr Oluwaseyi Ojo solicitor advocate, Taylor Wood for the Appellant / Claimant.
Mr Martin Palmer (instructed by Attwood & Co.) for the Respondent / Defendant.

Judgment

Mr Justice Birss:

1 The appellant appeals from the order made by Her Honour Judge Walden-Smith sitting at Central London County Court on 24th July 2014 following a trial. I gave permission to appeal on 12th September 2014. An issue arose about whether the correct destination for this appeal was the High Court or the Court of Appeal. In his judgment on 11th November 2014, David Richards J noted that since the case had been a Part 8 claim, the correct court to hear the appeal was the High Court. He rejected the respondent's submission that the matter should nevertheless be transferred to the Court of Appeal. There were no compelling grounds why it should be transferred.

2 Dr Lie and Dr Mohile are GPs in a partnership. The trial was of a claim and counterclaim between them concerned with bringing their partnership to an end. The issue before the judge was whether there should be a dissolution of the partnership under s35 of the Partnership Act 1890 or whether there should be expulsion of Dr Mohile from the partnership pursuant to a notice served by Dr Lie on Dr Mohile on 2nd March 2014. Dr Mohile contended for the former, Dr Lie for the latter. It is plain that there is no future in the partnership; the debate is about the mechanism by which it should come to an end. If Dr Lie is right the way the relationship comes to an end is very much more advantageous to him.

3 In a careful and complete judgment HHJ Walden-Smith found in favour of Dr Mohile. Dr Lie submitted that the judgment contained errors of law and relied on six grounds of appeal. Dr Mohile submitted that the judgment contains no error of law at all. In addition Dr Mohile submitted that a number of the points taken on appeal by Dr Lie were not matters raised before the judge. In any event they did not reveal errors of law either.

4 As the judge said in paragraph 4, the litigation between these two gentlemen has been protracted and has raised a number of different points. By the time the trial came before HHJ Walden-Smith in July, the dispute had already been to the Court of Appeal twice. There are also proceedings between these two parties and what was then the NHS South West Essex Primary Care Trust and is now NHS England. The judge recorded that it was agreed that that strand of litigation did not have any impact on the issues before her.

5 The circumstances are as follows. On 15th July 2002 the Dr Lie and Dr Mohile entered into a partnership agreement. They were the only partners. Clause 2(ii) provides that subject to the

provisions in the agreement for retirement, expulsion and dissolution, the partnership shall continue for the joint lives of the parties.

6 The medical practice would operate from premises in Chadwell St Mary in Essex. Dr Mohile owned the freehold to the premises. The two doctors were granted a periodic tenancy as joint tenants. Thurrock Primary Care Trust (PCT) entered into a Personal Medical Services Agreement with both doctors on 1st April 2004. The contractors' premises defined in the agreement are the premises in Chadwell St Mary.

7 They worked together amicably and successfully for a number of years but problems began to emerge. On 3rd June 2011 Dr Mohile served at least two notices on the partnership. One was a notice under s25 of the Landlord and Tenant Act 1954 terminating the tenancy on 1st January 2012. The other was a purported notice of dissolution of the partnership. Dr Lie started proceedings by issuing a claim form on 22nd March 2012. He sought dissolution of the partnership and claimed Dr Mohile was in repudiatory breach of the partnership agreement. A key objective of the claim was to arrange things so that Dr Lie would have the benefit of the existing or a continuing contract with the PCT.

8 In March 2012 Dr Lie sought and Mr Recorder Bedingfield granted an interim injunction restraining Dr Mohile from excluding Dr Lie from the premises. The order expressly did not permit Dr Lie to enter any part of the premises which was not part of the surgery.

9 In March 2013 the notice of dissolution came before HHJ Taylor at CLCC in March 2013. It then went on appeal to the Court of Appeal on 24th October 2013. Before the Court of Appeal Dr Mohile accepted that the purported notice of dissolution was not effective. That is because s26 of the Partnership Act 1890 does not apply because the partnership is not a partnership at will.

10 The focus then turned to the tenancy and notice to terminate. That came before HHJ Walden-Smith at the end of February 2014. Dr Lie was seeking to obtain the grant of a new tenancy to himself alone under s24 or s41A of the 1954 Act. A key problem for Dr Lie was because the partnership was continuing, Dr Lie could not rely on s 41A on his own. Section 41A(1)(d) could not be satisfied by Dr Lie alone when the relevant business was being carried on by both joint tenants. The judge's judgment was upheld by the Court of Appeal on 9th May 2014.

11 On 2nd March 2014, immediately after Dr Lie had lost the argument about the construction of s 41A and obviously as a reaction to losing the point, Dr Lie served an expulsion notice on Dr Mohile. The expulsion notice is said to be in accordance with clause 21(i) of the partnership agreement. Sub-clause (a) of clause 21(i) provides that a partner may by notice expel another partner from the partnership if that other partner has committed a grave breach or persistent breaches of the agreement.

12 The matter came before HHJ Walden-Smith for trial in July 2014. Dr Lie argued that the service of the notices in 2011 was a breach of the partnership deed and also relied on other breaches which were said to be sufficiently grave or persistent to justify a notice to expel. The parties argued about the state of the pleadings but the judge held that the key issues were sufficiently pleaded.

13 HHJ Walden-Smith heard evidence from both Dr Lie and Dr Mohile and also from Dr Lie's witness Paula Pasquale.

14 Dr Mohile's evidence, which the judge accepted, was that by 2009/2010 the relationship between the two doctors had broken down. She found that by this time the only discussions between them were in respect of clinical matters (and not administration) and even those discussions only took place by email. That was, as the judge said in paragraph 54 "no way in which a functioning partnership could continue". The judge also held that Dr Mohile had tried to be conciliatory and that the difficulties were not caused by him. All these findings were open to the judge and could not be seriously challenged.

15 Focussing on events after the notices in 2011, the judge noted that Dr Lie had continued to work in the practice throughout the period. She also accepted the evidence and submission of Dr Mohile that in 2013 Dr Lie had been deliberately and wrongly using what purported to be clinical appointments to carry out administrative work and had erased appointments. This meant that Dr Mohile, despite being an equal partner, was having to shoulder too much of the burden.

16 The judge decided that Dr Lie was not entitled to expel Dr Mohile from the partnership. She decided that the partnership should be dissolved pursuant to s 35(f) on the ground that in all the circumstances it was just and equitable to do so. A direction was given for an account to be taken.

17 On Dr Lie's behalf, the following grounds are advanced on appeal:

> Ground 1: That in considering the effect of Dr Mohile's notice in 2011, the judge did not give the partnership agreement contractual effect. The notice was a repudiatory breach of the agreement and entitled Dr Lie to expel Dr Mohile.
>
> Ground 2: That the judge was wrong to find that Dr Mohile was not in breach of his duty of utmost good faith.
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> Ground 3: That the judge erred in her construction of "grave" and /or "persistent" breach and ought to have held that the 2011 notices were a grave and persistent breach within clause 21(i)(a) of the partnership agreement, entitling Dr Lie to serve a notice expelling Dr Mohile.
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> Ground 4: That the judge erred in finding that Dr Lie had affirmed Dr Mohile's breaches.
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> Ground 5: That the judge erred in making findings that were not pleaded or in evidence
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> Ground 6: that the judge erred in accepting an inconsistent pleading from Dr Mohile in that his original defence asserted that the partnership was dissolved by the 2011 notices whereas his Counterclaim seeks dissolution on the equitable ground.

18 For the respondent Dr Mohile, counsel simply submitted that the judge had correctly identified the issue of substance between the parties. She had heard from both individuals and had determined the issue. The judge made no error of law in doing so.

Grounds 1, 2 and 4

19 Grounds 1, 2 and 4 can be considered together. The judge held that while the 2011 notice was ineffective in law to bring about the dissolution of the partnership, the notice was a justifiable reaction by Dr Mohile to what was happening. Moreover she held that even if the notice and other actions of Dr Mohile were a breach of the agreement of whatever character (including whether they were "grave" or "persistent" within clause 21), in any event Dr Lie did not accept them and the partnership continued. Dr Lie continued to work in the practice for a further three years and continued to take his drawings as a partner. He had elected to affirm the contract.

20 The starting point for ground 1 is the submission that the judge erred in law in not giving the partnership agreement contractual effect. The alleged error is that the judge ought to have held that the 2011 notice to dissolve the partnership was a repudiation of the contract and/or (ground 3) was a grave or persistent breach within clause 21(i)(a) of the partnership agreement.

21 The advocate for Dr Lie relies on *Hurst v Bryk [1999] Ch 1* and submits that this shows that contractual principles of repudiation are applicable to partnership agreements. He also submits that in that case the Court of Appeal (particularly Simon Brown LJ as he then was) clearly had sympathy with the 19 out of 20 partners who had agreed to bring about the premature dissolution of the firm but that did not alter the fact that correct analysis was that agreement between the 19 partners was a repudiatory breach of the partnership agreement which was accepted by the 20th partner. The advocate submitted that the fact HHJ Walden-Smith had sympathy with Dr Mohile's motives should not alter the fact that Dr Mohile's act was a repudiation.

22 Hurst v Bryk demonstrates, if it were needed, that the courts sympathy is not the issue. However the difference between the agreement in Hurst v Bryk and situation in this case is that the agreement of the other partners in Hurst did in fact bring the partnership to a premature end whereas here the notice served by Dr Mohile was not effective. It was clear that Dr Mohile wished to bring the partnership

to an end in 2011 but as the judge held in paragraph 98 he went about doing so by the wrong mechanism.

23 A key element in the judge's reasoning was that Dr Lie did not accept the notices but acted to ensure the partnership continued afterwards. She held (paragraph 102) that if the grounds were there in 2011 for Dr Lie to serve a notice of expulsion against Dr Mohile then he should have served the notice of expulsion then but he did not. The judge decided that Dr Lie made an election to keep the partnership alive and by his actions affirmed that there was not a grave breach or persistent breaches of the partnership deed. By the same reasoning, in paragraphs 75 and 76, the judge held that insofar as the notice represented a repudiation in 2011, there had been affirmation of the partnership since.

24 In relation to affirmation, the advocate for Dr Lie relied on two points. First he relied on the commencement of the claim in March 2012 and the terms in which the claim was pleaded and submitted that this was an acceptance of the repudiation. That allegation was not put to HHJ Walden-Smith and so she did not deal with it. In my judgment it does not undermine the judge's conclusion. It is true that the Particulars of Claim plead that Dr Mohile had repudiated the contract but at that time, March 2012, Dr Lie's claim was not for expulsion of Dr Mohile from the partnership, it was for dissolution. That remedy is now the one sought by Dr Mohile, not Dr Lie. It was only in March 2014, after Dr Lie had continued to work in the partnership for a further two years since the commencement of the claim, that Dr Lie changed tack and sought to rely on the conduct in 2011 as justifying the contractual remedy of expelling Dr Lie. In these circumstances the commencement of the claim in March 2012 cannot assist Dr Lie's claim raised in 2014.

25 The second point is that there was no time limit in the partnership agreement which would render Dr Lie's March 2014 expulsion notices invalid if they were based on grave or persistent breaches. The advocate for Dr Lie referred to paragraph 10-121 of Lindley & Banks on Partnerships (19th Ed) which notes that some partnership agreements impose time constraints on expulsion while others do not. It is correct that the terms of the agreement in this case do not contain any such time limit but in my judgment that is irrelevant. The judge's analysis based on affirmation and election was not based on any time limit in the agreement. The fact the grounds relied on for the March 2014 notices were not out of time from the point of view of the terms of clause 21(i) of the partnership agreement does not undermine the HHJ Walden-Smith's approach.

26 In considering the severity and significance of the 2011 notices, the judge held that the 2011 notices had to be seen in their context, which was a breakdown in a normal partnership relationship. She held that in the circumstances then in existence the notices were not a grave breach of the agreement, if they were a breach at all, and they were not a breach of the duty of utmost good faith. What was happening was that since the relationship had broken down, Dr Mohile was endeavouring to bring the partnership to an end, which included bringing the tenancy to an end.

27 The judge's rejection of the submission that the notice was a breach of the duty of good faith (ground 2) was because, on the facts, the judge held Dr Mohile was not placing his interests above those of the partnership or the medical practice, he was endeavouring to bring the partnership to an end, albeit by the wrong mechanism. She held that the combination of all the difficulties facing the partnership at that time meant he was justified in considering this partnership should be brought to an end. The judge was entitled on the evidence to find that Dr Mohile was not placing his interests above those of the partnership or the medical practice. The finding that the partnership had no future is unassailable. On that finding, there is no basis for challenging the conclusion that the notice was not a breach of the duty of utmost good faith.

28 As part of ground 2, it was submitted that Dr Mohile was bringing about an impossibility of performance of the agreement, which is itself a breach of the duty of good faith, (referring to Lord Atkins in *Southern Foundaries v Shirlaw [1940] AC 701* at 717, *Sykes v Land [1984] 2 E.G.L.R 8* (Fox LJ) and Rama v Millar [1996] 1 NZLR 257). The acts relied on by Dr Lie were first, by Dr Mohile terminating the tenancy and refusing to join in an application for a new one and second by Dr Mohile registering the practice as a sole practice with the Care Quality Commission (CQC) in October 2012.

29 I do not see how the argument about termination of the tenancy adds anything to Dr Lie's other submissions. As the judge held in paragraph 18, Dr Lie continued to work at the practice after service of the notices in 2011 and after communication with the Primary Care Trust. It was submitted that the judge did not give consideration to the fact that Dr Mohile excluded Dr Lie from the premises and that Dr Lie's continued attendance was only made possible by the injunction in March 2012. I do not accept that submission for two reasons. First reliance was placed firmly on the notices served in June 2011 and the judge held that Dr Lie continued to work in the partnership after services of the notices in June (paragraph 59). That was well before the injunction. Second, although it is correct that the trial judgment (dated July 2014) does not mention the injunction of Mr Recorder Bedingfield in March 2012, HHJ Walden-Smith was clearly well aware of it since she referred to it in her earlier judgment on 26th February 2014 when decided that Dr Lie could not rely on s 41A which was upheld in the Court of Appeal in March. Moreover the injunction does not help Dr Lie in any event since it compelled Dr Mohile to allow the partnership to continue. If anything it supports the judge's finding.

30 In preparing the draft of this judgment I mistakenly thought that the argument about Dr Mohile registering the practice as a sole practice with the CQC had not been pleaded. That was an error as the appellant's lawyers pointed out. It is pleaded in paragraph 21(f) of the Reply and Defence to Counterclaim and I need to address it. The appellant's skeleton contends (paragraph 39) that the judge did not address the issue of Dr Mohile's registration of the practice with the CQC as a sole practice. That is not correct. The judgment takes the allegation into account at paragraph 85 along with the service by Dr Mohile of the 2011 notices. The judge dealt with this alleged breach along with the 2011 notices. She asked if these were breaches of the duty of good faith and were grave or persistent (paragraph 86). At paragraph 87 the judge considered whether these were breaches which went to the heart of the partnership itself and doubted that they did because Dr Lie was able to continue working in the partnership in the way he had worked before and to continue to take drawings. The judge's ultimate conclusion on this and other aspects of the case was that in any event Dr Lie had elected to keep the partnership alive and by doing so affirmed that there were not grave or persistent breaches (paragraph 102). The Judge rejected the submission that that CQC registration brought about an impossibility of performance of the contract. The registration plainly did not prevent Dr Lie from continuing to work in the practice afterwards and I reject the appellant's case on ground 2 relating to the CQC registration.

31 As part of ground 1, the advocate for Dr Lie submitted that it was not a defence for a party who is alleged to have repudiated a contract to allege that he acted in good faith and was provoked by the injured party (citing *Federal Commerce & Navigation v Molena Alpha [1979] AC 757* at 784 (Lord Fraser). I accept that submission as a matter of law but it does not assist the appellant on the facts of this case. The judge was not excusing any breach by Dr Mohile in 2011 on the basis that it was the result of acting in good faith or was provoked. On the contrary her finding was that to the extent there was a breach in 2011, Dr Lie affirmed the contract afterwards.

32 As part of ground 4, the advocate for Dr Lie *referred to Golstein v Bishop [2014] EWCA Civ 10* (Briggs LJ). This had been cited before the judge on Dr Lie's behalf and was addressed in paragraphs 88 and 89 of the judgment. In my judgment there is nothing in this submission. The point in Golstein v Bishop was to distinguish between dissolution under s 35 of the Partnership Act 1890 and discharge for breach of the partnership contract. The first is discretionary and the second arises automatically by operation of contract law. In paragraph 16 of the judgment of Briggs LJ, he said the following:

> …Suppose that, by March in a particular year, partner B had so conducted himself as to render it impracticable for partner A to continue in partnership with him. Nonetheless, partner A soldiered on for three months before deciding to throw in the towel and seek a dissolution under Section 35(d) . His 'soldiering on' might in contractual terms have amounted to an affirmation, after conduct putting him to an election to determine or to carry on with the contract. But it will not necessarily do so under Section 35(d) if, for example, continuation of the business remained as unreasonably impracticable at the end of June as it had been at the end of March. …

33 This passage was cited by the judge in paragraph 88 of her judgment and addressed in paragraph 89. I can detect no error in law by the judge here. The point being made by Briggs LJ is that a partner who "soldiers on" may in contractual terms have lost the right to treat the earlier conduct as a breach but they will not necessarily have lost the right to apply for dissolution under s 35 . For example in the rest of paragraph 16 of his judgment, Briggs LJ continued:

> Of course, if partner B had in the meantime in some way mended his ways, continuation in business together might no longer be impracticable. Or, if B relied to his detriment upon an implied assertion that partner A would not treat B's conduct until the end of March as giving rise to grounds for dissolution, then that might be a reason why, as a matter of discretion, a dissolution could be refused. But that is an altogether more flexible test than the necessarily rigorous analysis which may be applied to an allegation of affirmation, which operates by reference to concepts of election, and requires no detriment to be shown at all.

34 HHJ Walden-Smith was not being asked by Dr Lie for an order for dissolution under s 35 . That is what Dr Mohile was seeking, not Dr Lie. On the contrary Dr Lie was seeking to use his alleged contractual rights to expel Dr Mohile from the partnership.

35 For these reasons I reject grounds 1, 2 and 4 of this appeal.

Ground 3 – grave and/or persistent breaches

36 Clause 21(i) of the partnership agreement lists a number of acts by one partner which would give the other partner the right to serve a notice of expelling him from the partnership. One of them (clause 21(i)(a)) is if the partner commits any grave breach of the agreement or persistent breaches of it.

37 Two breaches were relied on by Dr Lie before me as being grave or persistent, justifying service of the notice of expulsion in March 2014. One was Dr Mohile's notice in 2011 and the grounds for it. The judge dealt with that in the same way as the argument about repudiation. She held that Dr Lie had elected to keep the partnership alive and by his actions affirmed that these were not a grave breaches of the agreement. I can see no ground for challenging that conclusion on appeal. The advocate for Dr Lie referred to the dissenting judgment of Dillon LJ in DB Rare Books v Antiqbooks [1995] BLCL 306 at p322 but I can see nothing in Dillon LJ's judgment which undermines the approach of the judge in this case.

38 The other breach alleged to be a grave or persistent breach in the Appellant's skeleton argument relates to an episode about an employee, Ms Pasquale. The allegation is that Dr Mohile had unilaterally terminated her employment with the partnership in 2013 (contrary to clause 17(b), which required the other partners consent), that the termination of the employment led to a costly unfair dismissal claim in which Dr Lie was a defendant, that it was a grave breach and that the judges' finding on the point is in paragraph 78 of the judgment and was "perverse".

39 Neither the Particulars of Claim nor the Reply and Defence to Counterclaim mention the allegation about Ms Pasquale's dismissal. In fact the judgment does not address it and the submission about paragraph 78 is misconceived. It is true that paragraph 78 of the judgment refers to Ms Pasquale but that is in the context of her position as a witness. She was giving evidence about Dr Lie's character. The judge took that into account as she was entitled to do but this has nothing to do with breaches of the partnership agreement. The judge was entitled to find in paragraph 78 that Ms Pasquale evidence did not add a great deal to the determination of the dispute. The judge did not purport to decide a point about Ms Pasquale's employment or dismissal, no doubt because it was not raised. There is no justification in raising it now.

40 I reject ground 3.

Ground 5

41 This ground was not put at the forefront of the appeal. I can address it shortly. The judge heard evidence from both doctors. The judgment deals comprehensively with the circumstances in the practice between Dr Lie and Dr Mohile in paragraphs 43 to 71. The judge held that Dr Lie's actions in 2011 were in the interests of the medical practice and were not putting Dr Mohile's interests above Dr Lie's (judgment paragraph 96). She characterised them as a justifiable reaction to what was happening. On appeal the appellant alleges that the findings were not open to the judge and mentions two matters (telephone appointments and a salaried doctor). However the submission does not explain how either point could undermine the conclusion the judge reached. At best the argument is that the judge should have taken two further points into account and if she had done so, the outcome would have been different. These two points are the submission that Dr Lie had objected to Dr Mohile's use of telephone appointments and the allegation that Dr Mohile did not allow for the employment of a salaried doctor. I have reviewed the judge's findings about the circumstances in the practice. Given the significant and obvious way in which the relationship between Dr Lie and Dr Mohile had broken down, these two points (alone or together) are not sufficient to undermine the judge's judgment on this issue even if there was any merit in them.

42 A further point raised in this ground is an objection to the judge's finding that Dr Lie's notice of expulsion was a reaction to losing the Section 41A point because the Claim Form was filed in March 2012, before the s 41A point was decided. It is true that the claim was filed in 2012 but Dr Lie's notice was served on 2nd March 2014, a few days after the s14A point was decided. The judge's view was plainly an inference open to her in the circumstances and was a minor matter in any event.

Ground 6

43 The advocate for Dr Lie submits that by the time the matter came to be heard by HHJ Walden-Smith Dr Mohile's Defence stated that the partnership had been dissolved by the notice in 2011 whereas Dr Mohile's Counterclaim sought dissolution under s 35 . The submission is that one plea makes the other an abuse of process and the judge ought to have struck out one or both of them.

44 The appellant's submissions on this ground lose sight of the fact that by the time the matter was before the judge below, there had been protracted and complicated litigation between the parties, with two preliminary issues having been decided. The judge started her judgment with the statement that neither party considered that there was any future in the partnership and both wish to move on (paragraph 1). The judge held (paragraph 2) the issue was whether there should be dissolution (as Mr Mohile contended) or expulsion of Dr Mohile (as Dr Lie contended). This summary of the parties' positions was entirely accurate. The judge addressed the pleadings and found that the issues were sufficiently pleaded. She was entitled to do so. I reject the submission that either Dr Mohile's Defence or his Counterclaim could be characterised as an abuse of process.

Conclusion on the appeal

45 I have considered the main points advanced on the appellant's behalf both in the appellant's skeleton argument and orally. Once I had addressed the main points above I re-read the appellant's skeleton argument. It is lengthy and mentions numerous further matters of detail which the respondent has not seen fit to address. None of them amount to a good reason to allow this appeal. I therefore dismiss the appeal.

The September 2014 order

46 Another matter raised by the advocate for Dr Lie at the hearing on 4th December 2014 was an application by Dr Lie to require Dr Mohile to abide by the order I made in September 2014 when giving permission to appeal. That order required Dr Mohile to take various steps to hold the ring pending the appeal. Important ones were that Dr Mohile should pay Dr Lie's drawing from the

partnership, restore Dr Lie's professional subscriptions, restore his NHS smart card which Dr Mohile had disabled and allow Dr Lie access to the surgery. The order was made on paper and Dr Mohile applied to vary or set it aside. That was addressed by David Richards J in his judgment of 11th November 2014. He dismissed Dr Mohile's application to discharge or vary the order. As David Richards J pointed out, the payments would of course come into the final account.

47 Dr Lie complained that Dr Mohile has not complied with part of it and sought to have the matter dealt with at the same time as the appeal. However the application was not issued in time and Dr Mohile's counsel objected. I directed that Dr Mohile should serve his statement in response to the application and I would consider the matter.

48 Dr Mohile served a witness statement on 16th December 2014 dealing with the application. In his witness statement Dr Mohile explains that from his point of view Dr Lie has simply been trying to delay the break up of the partnership since 2011. The two doctors were being forced to remain together whilst the frustrating litigation continued. Dr Mohile states that he recognises he probably acted precipitously after HHJ Walden-Smith's judgment but explains that it was not an attempt to expropriate the business but was the result of relief that there was to be a dissolution.

49 Dr Mohile confirms that Dr Lie was allowed back into the surgery after the Order of David Richards J on 17th November 2014. On the question of partnership drawings, Dr Mohile has produced schedules showing the figures for September and October and seeks the court's guidance as to how drawings should be calculated. The process of taking a final account as part of the winding up the partnership is before CLCC but neither side has explained the stage which those steps have reached.

50 When the draft of this judgment was prepared, I had not seen any response from Dr Lie to Dr Mohile's statement and said as much in the draft judgment. In fact, as Dr Lie's lawyers pointed out, a witness statement from Dr Lie dated 23rd December 2014 was filed with the court. Sadly it did not reach me, but now I have a copy I can address it. The statement addresses recent events at the practice and deals with the drawings. The payment sought on Dr Lie's behalf for the drawings in September and October is £17,000 (a letter dated 19th November 2014 from Taylor Wood). The order I am minding to make when this judgment is handed down is that Dr Mohile should pay that sum forthwith. Before making that order and at the handing down I will hear any submission either party wants to make.

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