

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CIVIL DIVISION**

3
4 **Cause No: G 0074/2015**
5

6 **BETWEEN:**

7 **CARL DAVID NEIDHARDT**
8 **PLAINTIFF**
9

10 **AND:**

11 **DARIN KEITH DACRES**
12 **DEFENDANT**
13

14
15 **Appearances:**

16 **Matthew Dors of Ritch & Conolly for the**
17 **Plaintiff**

18 **Defendant in Person**
19

20 **Before:**

Mr. Justice Robin McMillan (Actg.)

21 **Heard:**

29TH July 2015
22

23 **REASONS FOR JUDGMENT**
24

- 25
26 1. On 29th July 2015 I granted an Order arising from the second hearing in this action,
27 commenced by way of Originating Summons dated the 5th May 2015.
28

29 ***THE FIRST ORDER***

- 30 2. On 5th June 2015 I had initially granted an order in these terms:
31
32 i. *By consent of the parties, the partnership was dissolved on the 29th*
33 *April 2015.*
34 ii. *This matter shall continue as if commenced by general form*
35 *Originating Summons in accordance with Grand Court Rule Order 28*
36 *without the need to reserve or amend the Originating Summons.*
37 iii. *The Defendant shall by 4pm on 19th June 2015 provide a full account*
38 *in accordance with paragraph 2(a) and (b) of the Originating*
39 *Summons.*
iv. *The Plaintiff's application for an interim injunction is dismissed.*

- 1 v. *The matter shall be relisted on the first available date after 24th June*
2 *2015 before Mr. Justice McMillan.*
3 vi. *Costs in the cause.*

4 **THE BACKGROUND**

5 3. The Plaintiff is non-Caymanian and the Defendant is Caymanian. The parties were in
6 partnership for the purposes of operating a tour bus business. There was no written
7 partnership agreement. The Partnership was dissolved on 29th April 2015.

8
9 4. The Plaintiff states at paragraphs 4-12 of his Affidavit dated 30th April 2015:

10 "4. *Whilst on vacation in Grand Cayman from 27 to 30 May 2014, staying at*
11 *the Westin Hotel on Seven Mile Beach, I met the Defendant who was*
12 *working at the Westin as a doorman.*

13 *The Defendant gave me and my travelling companion a ride to dinner one*
14 *evening and started talking about the possibility of opening up a tour*
15 *service using buses to transport tourists from the cruise ships.*

16 5. *When I returned to Houston I sent the Defendant an email on 1 June 2014*
17 *so that he had my email address. He replied on 2 June in the following*
18 *terms:*

19 " *Hey Dave, how is it going? Another day in paradise here.*
20 *Have you been thinking tourism plan that I brought to*
21 *you? Ready to make some money?" I replied: "Always*
22 *ready – drop me some details when you get a chance –*
23 *was looking at the web and appears to be some*
24 *competition – Grand Cayman tours / Grand Cayman*
25 *excursions etc. I'm open but we have to make the numbers*
26 *work:)"*

27 6. *The Defendant contacted me by telephone in mid June 2014. The*
28 *Defendant's proposal was that I would purchase a bus (later study showed*
29 *that a second bus would make the business more viable) and provide the*
30 *necessary funds to cover the start-up costs and the Defendant would*
31 *manage the business running the two buses, possibly driving one of them.*
32 *The profits would be split 60:40 in the Defendant's favour.*

33 7. *Using the information that the Defendant supplied to me, the cruise ship*
34 *schedules and port loading projections for the rest of the year and into*
35 *2015, I calculated a projected gross annual income of approximately*
36 *CI\$221,000 with a net annual profit of CI\$170,000. This projection was*
37 *based a business level provided by the Defendant of 2 buses running 5*
38 *days per week at 3 trips per day with a 70% load factor.*

1 8. I considered the Defendant's proposal and, around the end of in or about
2 June 2014 agreed to it. We did not enter into any written agreement.

3 9. Using an agent in Japan, Crown Trading Company Ltd. ("Crown"), I
4 purchased two Toyota Buses, a 1995 Toyota Coaster, VIN HZB50-
5 0007205 and a 1996 Toyota Coaster, VIN HZB40-0002686 ("the Buses")
6 and arranged for them to be shipped to the Cayman Islands. The Buses
7 were purchased separately in August and September 2014 and arrived in
8 Grand Cayman separately in September and October 2014. I made the
9 following wire transfers to Crown for the purchase and shipping of the
10 Buses:

11 - 11 July 2014 - US\$6000 plus US\$45 fees
12 - 23 July 2014 - US\$17,573 plus US\$45 fees
13 - 29 August 2014 - US\$20,723 plus US\$45 fees
14 - TOTAL: US\$44,431

15 10. In addition to the sums paid to Crown, I also made the following payments
16 to the Defendant to cover import duties, permit fees, driver's license costs,
17 insurance costs, cooperative fees and other start-up costs:

18 5 August 2014 - Wire transfer - US\$1,250 + US\$45 fees;
19 17 September 2014 - Wire transfer - US\$750 + US\$45 fees;
20 29 September 2014 - Cash - US\$14,000;
21 12 November 2014 - Wire transfer - US\$3,400 + US\$45 fees;
22 TOTAL: US\$18,410.

23 11. In addition to the sums paid to Crown and the Defendant I also made a
24 direct payment of US\$76.50.

25 12. The total amount that I have paid is US\$64,042.50."
26

27 5. The Plaintiff further states at paragraph 19:

28 "19. The Defendant has retained all of the income that he has received from the
29 use of the buses and despite numerous assurances that he would do so, he
30 has failed to transfer any funds to me and has instead claimed to have
31 applied some of the income derived from the use of the business to satisfy
32 his personal financial obligations."
33

34 6. The Plaintiff also states at paragraphs 23 and 24:

35 "23. Although there was no written partnership agreement, I accept that I was
36 in partnership, as defined by section 3 of the Partnership Law (2013
37 Revision), with the Defendant. I am advised by my Attorneys that, by virtue
38 of section 32(c) of the Partnership Law, a partnership for an undefined
39 period can be dissolved by giving notice of the intention to dissolve the
40 partnership.

41 24. Therefore, on 29 April 2015, I instructed Ritch & Conolly to send the letter
42 that appears at page 22 of CDN1 to dissolve the partnership."
43

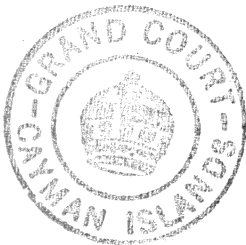
1 7. Having reviewed the Plaintiff's Affidavit and those of the Defendant dated 5th June
2 2015 and 20th July 2015, on a balance of probabilities I fully accept the Plaintiff's
3 narrative account of this matter. I also note the Plaintiff's contention that his payment
4 of US\$64,042.50 was an advance. Secondly, in the alternative, the payment was said to
5 be a payment of capital. The Defendant on the other hand made no payment of any
6 advance or capital. In my view, the Plaintiff's payment was an advance.

7

8 8. The relevant letter from Ritch & Conolly addressed to the Defendant's then Attorneys-
9 at-Law states:

10

11 “ *We have not received a response to our letter dated 10 April 2014.*
12 *As a result, you are hereby notified that the partnership between Mr.*
13 *Neidhardt and Mr. Dacres is dissolved with immediate effect.*
14 *Please confirm, by return:*
15 1. *That your client will not continue to use the Buses;*
16 2. *The current mileage of the Buses;*
17 3. *The location of the Buses;*
18 4. *That your client will agreed to an inspection of the Buses;*
19 5. *Contact details for your client to arrange for inspection of the Buses.*
20 *We look forward to hearing from you.”*



21

22

23

THE SECOND HEARING

24 9. Following the first hearing, the Court has subsequently been asked to consider the
25 status and disposition of the buses themselves as well as certain accounting matters
26 arising.

27

28 10. I have accepted that the Plaintiff paid a total of US\$64,042.50 between the 11th July
29 2014 and the 12th November 2014 for the purchase of the buses and other associated
30 startup costs¹. This amount is agreed by the Defendant².

¹ (Paragraphs 9-12 of the Plaintiff's Affidavit dated 30th April 2015)

1 11. I have also accepted, as the Plaintiff submits, that the buses are Partnership Property as
2 defined by s.21(1) of the Partnership Law (2013 Revision) ("PL").
3

4 ***THE PARTNERSHIP LAW (2013 REVISION)***

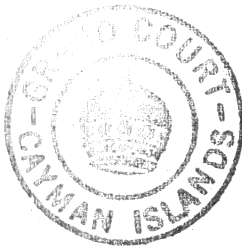
5 12. Sections 24, 39 and 44 of the PL respectively state:

6 *Section 24 PL:*

7 " The interests of partners in the partnership property and their rights and
8 duties in relation to the partnership shall be determined, subject to any
9 agreement express or implied between the partners, by the following rules-
10 (a) All the partners are entitled to share equally in the capital and profits
11 of the business and must contribute equally towards the losses whether
12 of capital or otherwise sustained by the firm;"
13

14 *Section 39 PL:*

15 " On the dissolution of a partnership every partner is entitled, as
16 against the other partners in the firm and all persons claiming
17 through them in respect of their interests as partners, to have the
18 property of the partnership applied in payment of the debts and
19 liabilities of the firm, and to have the surplus assets after such
20 payment applied in payment of what may be due to the partners
21 respectively after deducting what may be due from them as
22 partners to the firm; and for that purpose any partner or his
23 executors or administrators may, on the termination of the
24 partnership, apply to the court to wind up the business and affairs
25 of the firm."
26
27



28 *Section 44 of PL:*

29 " In settling accounts between the partners after a dissolution of
30 partnership, the following rules shall, subject to any agreement, be
31 observed-
32 (a) losses, including losses and deficiencies of capital, shall be paid
33 first out of profits, next out of capital, and lastly if necessary by
34 the partners individually in the proportion in which they were
35 entitled to share profits; and
36 (b) the assets of the firm including the sums, if any, contributed by the
37 partners to make up losses or deficiencies of capital, shall be
38 applied in the following manner and order:-
39

² (paragraph 13 of the Defendant's Second Affidavit dated 20 July 2015)

- (i) in paying the debts and liabilities of the firm to persons who are not partners therein;
- (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
- (iii) in paying to each partner rateably what is due from the firm to him in respect of capital; and
- (iv) the ultimate residue (if any) shall be divided among the partners in the proportion in which profits are divisible."

13. It is clearly established that unless there is a specific agreement to the contrary each partner is entitled to force the sale of all partnership assets which are capable of being sold.

14. For example, *Halsbury's Laws of England, Volume 79 (2014)* states at paragraph 205 in relation to the realization and disposal of partnership assets:



" Upon a general dissolution, each partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners, to have the partnership property applied in payment of the firm's debts and liabilities, and after such payment to have the surplus assets applied in payment of what may be due to the partners after deducting what may be due from them to the firm. For this purpose, any partner or his representatives may bring a claim to have the business and affairs of the partnership wound up by the court with all proper accounts and inquiries. Subject to any contrary agreement, this implies a right to have the assets sold to provide a fund for discharge of liabilities, and for the adjustment of the rights of the partners among themselves."

15. In addition, as stated in *Mark Blackett-Ord's Partnership (1997)* at page 332, partners may not insist on their "share" in the partnership business remaining unsold for them, as the Defendant has principally contended in this case.

16. In this context I should at this stage point out that at the commencement of the second hearing on the 29th July 2015 the Defendant's then Attorney-at-Law, Mr. James Kennedy, with the Court's permission, withdrew from the case and, at that juncture, the Defendant in person sought an adjournment.

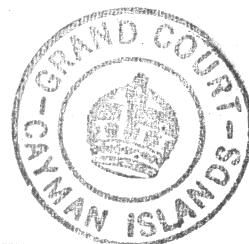
1 17. However, given that the Defendant had ample opportunity to prepare his case and to
2 adduce such relevant and admissible evidence as he might have wished to adduce, the
3 Court was unable, in the circumstances, to accede to that request, bearing in mind the
4 interests of justice taken as a whole and the potential prejudice to the Plaintiff of
5 further delay.

6
7 *CONCLUSION*

8 18. Bearing fully in mind the facts of the case and the principles of law applicable to and
9 pertinent to those facts, I have concluded that the buses should be sold, in conjunction
10 with certain other related protective directions. This conclusion is consistent with the
11 statutory regime which I have described, namely that upon settling the final accounts,
12 the partnership assets must be applied first to external debts, then to the repayment of
13 advances, then to the repayment of capital and only the residue is divided among the
14 partners according to their share of the profits. Each stage must be completed in turn.

15
16 19. Before concluding these Reasons I should draw attention to the very unusual and
17 possibly unfortunate manner in which this partnership arose. The Plaintiff, while on
18 vacation in Grand Cayman, had met the Defendant who was working at the Westin
19 Hotel as a doorman. It would seem from the evidence that this enterprise was
20 conceived without a comprehensive business plan and without professional guidance.

21
22 20. The Defendant has endeavoured to advance the partnership business, but he has clearly
23 failed to retain the Plaintiff's confidence, leading to the dissolution of the partnership.



1 Although the Defendant can be and has been validly criticized for his failure to
2 communicate adequately with the Plaintiff and indeed has to this point failed to
3 produce adequate accounts, nonetheless the Court must have proper regard for the
4 practical challenges which the Defendant faced in this matter.

5
6 21. Consequently, although I have awarded costs to the Plaintiff, in the interests of justice,
7 I have declined to award costs upon an indemnity basis as the Plaintiff has invited me
8 to do.

9
10 **Dated this the 14th day of September 2015**

11
12 *Robin McMillan*

13 **Mr. Justice Robin McMillan (Actg.)**
14 **Acting Judge of the Grand Court**

