Dr Sonny Lie v Dr Rajan Mohile

Appeal Ref: CH/2014/0485

High Court of Justice Chancery Division

11 November 2014

[2014] EWHC 3709 (Ch)

2014 WL 5797433

Before: Mr Justice David Richards

Date: 11 November 2014

On Appeal from the Central London County Court

Hearing date: 4 November 2014

Representation

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

Judgment

Mr Justice David Richards:

1 By an order dated 12 September 2014, Birss J gave the appellant, Dr Sonny Lie, permission to appeal against an order of HHJ Walden-Smith sitting at the County Court at Central London dated 24 July 2014. Paragraph 3 of the order of Birss J provided:

"Pending the determination of this appeal:

(1) the Respondent shall:

a. pay the Appellant's full drawing for the month of August 2014 and any shortfall in the month of July 2014 within 14 days;

b. cause to be paid or restored the Appellant's professional subscriptions cancelled by the Respondent

c. cause to be restored the Appellant's NHS smart card disabled by the Respondent

(2) the Respondent shall not:

a. either by himself, his agents or servants exclude the Appellant or cause the Appellant to be excluded from the premises known as Chadwell Medical Centre situated at 1 Brentwood Road, Grays, Essex RM16 4JD at al times

(3) the Appellant shall not:

a. attend any part of the premises which do not form part of the surgery premises known as Chadwell Medical Centre

b. remove copy or transmit any documents or records from the surgery which do not form part of his medical practice obligation or which are not related to his practice."

2 The order in paragraph 3 was made on an application by Dr Lie without a hearing and the respondent, Dr Rajan Mohile, applies to discharge it.

3 The appeal arises in a partnership action. After a three day trial, HHJ Walden-Smith dismissed Dr Lie's claim for an order giving effect to a purported notice of expulsion from the partnership served

by him on Dr Mohile and, on Dr Mohile's counterclaim, made an order dissolving the partnership under section 35 of the Partnership Act 1890 .

4 Dr Lie and Dr Mohile had been in practice as general practitioners under a partnership agreement dated 15 July 2002. They were and remain parties to a contract with the local primary care trust for the provision of medical services. Both the contract and the partnership agreement require the practice to be carried on from specified premises in Chadwell St Mary, Essex (the premises).

5 The freehold title to the premises is owned by Dr Mohile, who granted a periodic tenancy to Dr Lie and himself as joint tenants in order to carry on the partnership practice. Relations between them subsequently deteriorated and in June 2011 Dr Mohile served a purported notice of dissolution of the partnership and served on himself and Dr Lie a notice under section 25 of the Landlord and Tenant Act 1954 terminating the tenancy on 1 January 2012. These notices led to extensive litigation between the parties, including two full appeals to the Court of Appeal. The upshot was that the purported notice of dissolution was ultimately accepted by Dr Mohile to be invalid but the tenancy was terminated and Dr Lie failed in his attempt to obtain the grant of a new tenancy to himself alone under section 24 or section 41A of the 1954 Act. At an early stage in those proceedings, in March 2012, Mr Recorder Bedingfield granted an injunction restraining Dr Mohile from excluding Dr Lie from the premises until determination of Dr Lie's application for the grant of a new tenancy (the injunction).

6 In the meantime, the partnership proceedings in which the present appeal arises were commenced. At a hearing on 3 March 2014, HHJ Walden-Smith dismissed Dr Lie's application for a new tenancy under section 41A , subsequently affirmed by the Court of Appeal, but ordered that the injunction:

> "shall continue until the Order of the Court disposing of proceedings in [the partnership action] at the trial listed to be heard on 16 June 2014."

The trial was subsequently re-listed for July 2014.

7 The combined effect of the termination of the tenancy granted by Dr Mohile and the dismissal of Dr Lie's claim for a new tenancy was that no tenancy of the premises in favour of the partnership existed. This did not however mean that Dr Lie had no right to enter upon the premises. It is well established that in circumstances such as these, in order to give effect to the partnership, the partner who owns the premises on which the partnership business is carried on is taken to have granted a licence to the other partner or partners to enter upon the premises for the purposes of the partnership business: see, for example, *Harrison-Broadley v Smith [1964] 1 WLR 456* . In the present case, effect was given to this licence by the order of HHJ Walden-Smith continuing the injunction, which no longer had any proprietary basis, until the disposal of the dissolution proceedings.

8 In support of the application for the order granted by Birss J, and in opposition to the application made for its discharge, one of the submissions on behalf of Dr Lie was that the injunction continues until the final order in the partnership proceedings following the winding-up of the partnership, and did not expire on the order for dissolution made in July 2014. It was pointed out, quite correctly, that in the case of a partnership an order for dissolution is the beginning of the end, not the end itself. However, it is in my judgment clear from the terms of the order made on 3 March 2014, extending the injunction, that it was to expire on the making of the order at the trial of the dissolution proceedings in June 2014, or as it happens July 2014. It is not in my view arguable that the injunction has continued in force since then.

9 It does not, however, follow that the implicit licence granted by Dr Mohile to Dr Lie also terminated with the order of HHJ Walden-Smith on 24 July 2014. The partnership business is not terminated by the order for dissolution, but continues, albeit for the purpose of winding up the partnership. In practice, a partnership business is often continued after dissolution for the purpose of preserving its goodwill and thus maximising the prospects of a sale. Even if the business is not continued for that purpose but solely for the purpose of winding it up, the partnership business does not immediately cease. Unless and until the court appoints a receiver on the application of any of the partners, it is the right of each partner to participate in the partnership business which is being wound up. If one

takes the example of a partnership business carried on at premises leased from a third party, no partner would be entitled to exclude the other partners from those premises. Similarly, in a case where the premises are owned by one of the partners, the implied licence is not terminated while there remains a partnership business carried on at those premises.

10 It follows that, even without an appeal, Dr Lie has an entitlement to enter upon the premises. Further, an appeal court may grant an injunction enforcing that entitlement pending the hearing of the appeal, particularly where as here permission to appeal has been given. The injunction pending appeal in this case may be justified on the grounds that it is necessary in order to protect Dr Lie's position which, if the appeal succeeds, means that he is entitled to the partnership business to the exclusion of Dr Mohile.

11 The court is not however bound to grant an injunction in favour of a partner in the position of Dr Lie on either of the bases set out above. In some cases, the court does so (see Bradley-Harrison v Smith) and in other cases it does not. The exercise of the discretion to grant an injunction will depend on the circumstances of the case.

12 On balance, I have concluded that the circumstances of the present case make it appropriate to continue the order made by Birss J. First, Dr Mohile acted precipitously and without justification in informing the staff at the premises immediately after HHJ Walden-Smith had given judgment in July 2014 that Dr Lie had no right to enter on the premises and that they should call the police if he attempted to do so. I do not suggest that Dr Mohile did not believe that he had the right to give such instructions but he was clearly unaware of the licence which Dr Lie enjoyed as a partner. Secondly, it appears that Dr Mohile simply continued the medical practice at the premises as if it belonged solely to himself, employing locums to do the work which Dr Lie was unable to do by virtue of his exclusion from the premises. Thirdly, the medical practice undertaken pursuant to the contract with the primary care trust is a partnership asset and there is no evidence to indicate that there has been any change to that contract. Dr Lie and Dr Mohile remain jointly and severally liable to provide the services stipulated by that contract but Dr Mohile's actions mean that Dr Lie has no involvement in either the performance of the contract or in the conduct and winding-up of the partnership business. It was said on behalf of Dr Mohile that Dr Lie has not attempted to gain access to the premises, notwithstanding the order of Birss J. In the light of the instructions given by Dr Mohile to the staff, Dr Lie has shown sensible restraint in this respect.

13 As against these factors, I obviously have taken into account that requiring two partners who have fallen out so badly to work together under one roof could be damaging for the practice and for the winding-up of the partnership business. In some cases this would be a weighty consideration but in the present case relations between the partners have been bad since at the latest June 2011 but they nonetheless managed to carry on the partnership business at the premises for three years until July 2014 without, as HHJ Walden-Smith makes clear in her judgment, any detriment to patients.

14 As to the provisions of paragraph 3(1) of the order of Birss J, I can see no proper basis on which Dr Mohile disabled Dr Lee's NHS smartcard and I have no hesitation in dismissing the application to discharge that part of the order. Sub-paragraph (b) requires Dr Mohile to cause to be paid or restored Dr Lie's professional subscriptions cancelled by Dr Mohile, which include in particular his membership of the Medical Defence Union. Dr Mohile has not cancelled his own membership or other professional subscriptions and it cannot be right that they are denied to Dr Lie. As regards the drawings for which sub-paragraph (a) makes provision, I have hesitated more, because they could form part of the accounting exercise. Dr Mohile does not however suggest that he has not himself taken drawings and he does say that the practice has incurred expenditure in paying locums to do work which would otherwise have been undertaken by Dr Lie. On balance I consider that it would not be right to discharge this part of the order either, but the payments will of course come into the final account.

15 In conclusion, therefore, I have decided to dismiss Dr Mohile's application to vary or discharge the order of Birss J.

16 An issue arose as to whether an appeal from the order of HHJ Walden-Smith lay to the High Court or to the Court of Appeal. It was suggested in correspondence by Dr Mohile's solicitors with Dr Lie's

solicitors and with the court that as the claim had proceeded below as if it were allocated to the multi-track, it should be treated as if it had been so allocated, with an appeal lying to the Court of Appeal. At the hearing, counsel for Dr Mohile accepted that, as it had not been so allocated, an appeal lay correctly to the High Court. Dr Mohile nonetheless applied for an order under CPR 52.14 transferring the appeal to the Court of Appeal. Counsel for Dr Mohile accepted that the appeal does not raise an important point of principle or practice, so that the order could be made only on the basis that there is some other compelling reason for the Court of Appeal to hear it. The facts that the proceedings would have been conducted exactly as they were if an allocation to the multi-track had been made and that, if such an allocation had been made, an appeal would lie to the Court of Appeal do not, in my judgment, constitute compelling grounds for this appeal to be heard by the Court of Appeal. Many appeals to the High Court from final orders involve issues of law and challenges to findings of fact, and this appeal is no different.