



EMPLOYMENT TRIBUNALS

Claimants: Mr D Williams and others (see schedule)

Respondents:

1. Mrs Caroline Timmons t/a Hillside Care Home
2. Mr Donn Timmons t/a Hillside Care Home
3. Mr Paul Williams
4. Mrs Catherine Williams

HELD AT: Manchester

ON: 24 October 2019 and
8 November 2019 (in
chambers)

BEFORE: Employment Judge Slater

REPRESENTATION:

Claimants: Mr Dan Williams on behalf of all claimants
First Respondent: Not represented (no response entered and in bankruptcy)
Second Respondent: In person
Third and Fourth Respondents: Mr Alex Francis, counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The third and fourth respondents are removed as respondents to the claims.
2. The claims will proceed to hearing on a date to be notified, against the first and second respondents.

REASONS

Issues for this preliminary hearing

1. This was a preliminary hearing to determine whether the third and fourth respondents should remain as respondents to these claims. It was agreed that this required me to determine whether they were partners in the Hillside Care Home business at the time of the claimant's dismissal. If they were not, they would not be liable for any award that may be made to the claimants and they should be removed as respondents.
2. I informed the parties that any argument that the second respondent ceased to be a partner prior to the dismissal of the employees was not directly a matter for this hearing but, for the purposes of determining the issue before me, I might have to make findings of fact which would determine whether one partnership (including the second respondent) dissolved, and whether another (excluding the second respondent) was formed, prior to the dismissal of the claimants.
3. Whether the second respondent has a right to be indemnified by the third and fourth respondents under an agreement made by them as part of the divorce settlement of the first and second respondents is not a matter to be decided by this tribunal.

Context of this preliminary hearing

4. The claimants were all employees at the Hillside Care Home. They were all dismissed when the Hillside Care Home closed.
5. They brought claims for holiday pay, unpaid wages and notice pay. I understand that statutory redundancy payments have been paid to the claimants from the National Insurance Fund.
6. The claimants originally brought their claims against the first two respondents, partners trading as the Hillside Care Home. The claims were presented on 5 January 2019. The first respondent was declared bankrupt on 7 January 2019. Although the Hillside Care Home partnership went into administration in October 2018, the Secretary of State's position is that National Insurance Fund will not make any payment to the claimants, other than the statutory redundancy payments, because one partner, Don Timmons, remains solvent.
7. At a hearing on 25 March 2018, the claim was amended to add the third and fourth respondents. The judge recorded that this was done:

“upon the assertion of Mr D Timmons that he and Mrs C Timmons... together with Mr and Mrs Williams were in partnership and carried on the business of Hillside Care Home and, that he was discharged by the remaining partners from his obligations in respect of that partnership in or about March 2016.”

8. The first respondent has not entered a formal response although, in correspondence, she has stated that she is not resisting the claims. The other respondents have entered responses. The first respondent, although named as Caroline Timmons in the proceedings, has, following the divorce, reverted to using the name of Caroline Williams. She may be referred to as Caroline Timmons or Caroline Williams in these reasons.

9. The third and fourth respondents, in their responses, asserted that they had never been partners in the Hillside care home business. This preliminary hearing was listed to decide whether they should remain as respondents to these claims.

10. The claimants attended this preliminary hearing and I heard evidence from Mr Dan Williams (who is no relation to the respondents). Dan Williams, on behalf of all claimants, also had an opportunity to question witnesses and make submissions. However, in reality, this was a dispute between the respondents as to who were the partners in the business at the time the claimants were dismissed and, therefore, who would be liable for any award to the claimants. The claimants will have no remedy against the first respondent except to prove in the bankruptcy. In practice, therefore, they are likely to get little, if any, remedy from the first respondent.

11. It is a matter of great regret, that these proceedings have been prolonged for the claimants, who understandably just want to receive the payments they believe are due to them, because of what is both a business dispute and a family dispute. Mr Dan Williams commented, in his closing submissions, that the claimants felt they had been dragged into a family feud which the staff should not be involved in.

Evidence

12. I heard evidence from the second, third and fourth respondents. I took a document entitled "Response of Donn Timmons" as the witness statement for the second respondent. The first respondent, who, as noted above, had not presented a response, did not give evidence, although she was present in the hearing room. All the claimants had prepared witness statements. I read these but decided that it was not necessary to hear evidence from all of them since they could not give evidence which would help me decide the issue I had to decide at this hearing i.e. who were the partners in the business at the time of their dismissal. I did hear evidence from Mr Dan Williams. I also heard evidence, for the second respondent, from Mr Brian Timmons, the second respondent's father. I will refer to the second respondent in the remainder of these reasons as Donn Timmons and will refer to the third and fourth respondents as Paul and Catherine Williams. Catherine Williams is also referred to in some documents as "Olive".

13. I had a bundle of documents from the third and fourth respondents and a separate bundle of documents from the second respondent. The second respondent complained that he had only got the documents from the other respondents the previous night and Mr Francis commented that Don Timmons' submissions appeared to be slightly different to those done in April and that they had only received the second respondent's documents the night before. I said that, unless any party made an application for a postponement, I would proceed on the basis that the parties were ready to proceed. No party made an application for postponement.

Facts

14. Caroline Timmons and Donn Timmons were married. Paul and Catherine Williams are the parents of Caroline Timmons. Paul and Catherine Williams are experienced in the running of care homes. It does not appear that Caroline and Donn Timmons had experience running care homes prior to the purchase of the Hillside Care Home business.

15. Caroline and Donn Timmons purchased the business of Hillside Care Home (“the business”) in 2008. The business was purchased with the assistance of a loan in the names of Caroline and Donn Timmons. Paul and Catherine Williams introduced Caroline and Donn Timmons to the bank which provided the loan and they acted as guarantors for the loan. Additional start-up capital was provided by way of a loan by Paul and Catherine Williams.

16. It is common ground that Caroline and Donn Timmons were partners in the Hillside Care Home business beginning when they purchased the business in 2008. There was no partnership deed.

17. Don Timmons has not maintained a clear and consistent position in these proceedings as to whether he was saying that Paul and Catherine Williams were also partners in the business from the outset or whether he was saying they became partners in March 2016. He has maintained, since the preliminary hearing on 25 March 2018, that he ceased to be a partner in March 2016. The notes of the preliminary hearing suggest he asserted that all four of them were partners from the outset and he ceased to be a partner in March 2016 but Donn Timmons said in cross examination that he did not agree this accurately recorded what he had said. He said it was difficult to answer, when I asked if he said that Paul and Catherine Williams became partners in March 2016 and were not partners before. He said he knew the business was given to the three of them in March 2016. He then said that the reality was that Paul and Catherine Williams set up the business and ran it and legally they were partners; that was the commercial reality.

18. Donn Timmons did not play an active part on a day-to-day basis in the business. He was, at all relevant times, employed by another organisation as a sales manager.

19. Caroline, Paul and Catherine Williams were all active in the running of the home. There is a degree of dispute as to their level of involvement. I do not find it necessary to make specific findings as to their day-to-day tasks. However, it does not appear to be in dispute that Paul Williams was the office manager and Catherine Williams was the care manager. Paul Williams organised the financial running of business. As the designated care manager, Catherine Williams was the nominated manager for Care Quality Commission (CQC) purposes. They were both paid remuneration as employees through PAYE. After the business closed, they received statutory redundancy payments from the National Insurance Fund.

20. The CQC certificate of registration was issued in the names of Caroline Timmons and Donn Timmons.

21. Drawings were paid into the joint account of Caroline and Donn Timmons until 2012.

22. In 2012, Caroline and Donn Timmons separated. They subsequently divorced. The relationship from the time of separation and the divorce proceedings were extremely acrimonious. In particular, there was difficulty in agreeing access arrangements for the children. During his evidence, Donn Timmons explained some of his correspondence as being tactical, using the business as a tool in an attempt to obtain access to his children.

23. In July 2015, two bank transfers, totalling £55,000 were made from the business account to the account of Paul and Catherine Williams. I accept the evidence of Paul Williams that the intention of the transfers was that Mr and Mrs Williams would hold the money until Caroline Timmons needed to pay her tax and the money would be used for that and any excess returned to the business. The payments are given the reference "tax hold" in the bank statement, which is consistent with this explanation. I find, on a balance of probabilities, that this was not a payment of partners' "drawings" to Paul and Catherine Williams.

24. Donn Timmons referred me to a substantial increase in monthly pay for Catherine Williams from 3 August 2012 to 5 September 2012. I did not see any pay records for months before or after this period. It appeared to me that the August pay was unusually low for someone working as the Care Manager and the September pay was a more expected level of pay. I have not been given an explanation for the change in pay recorded. However, the difference in pay does not suggest to me a payment of "drawings" in September 2012.

25. On 18 November 2015, Donn Timmons wrote to Caroline Timmons, stating that he wrote "in the capacity of partner at Hillside residential care home." He wrote that his partner share of 50% had not been paid during the period 2012 to 2015.

26. On 13 December 2015, Donn Timmons wrote again to Caroline Timmons, noting that she had refused to authorise his drawings. He wrote "I remind you that Hillside is our jointly owned business."

27. On 15 February 2016, Donn Timmons wrote to Paul Williams about cheques Donn Timmons was to authorise, requiring invoices/contracts or receipts to back up the cheques. He wrote that failure to present this may delay payment to suppliers and result in disciplinary action being taken against Paul Williams under the terms of his employment.

28. On 27 February 2016, Donn Timmons wrote to Caroline Timmons, stating that he had requested reasonable information from "our employee Paul Williams" which had not been delivered. He wrote further, "this constitutes a breach within his remit which poses a risk to our business."

29. An email from Donn Timmons to Caroline Timmons dated 2 March 2016 included the following: "in my capacity as partner of Hillside I will be holding a weekly management meeting with Olive Williams to review commercial and operational performance of business."

30. In March 2016, there was a meeting between Donn Timmons, Paul and Catherine Williams and Brian Timmons to attempt to negotiate a settlement of the business and other outstanding matters. Paul and Catherine Williams were acting on behalf of Caroline Timmons. Caroline Timmons did not attend the meeting but subsequently signed the undated document entitled “Donn Timmons (“DT”) and Caroline Williams (“CW”) – Proposed Settlement Agreement.” The effect of this document is in dispute, in particular, whether it gives Donn Timmons an indemnity against any liabilities arising from the continued operation of the Hillside Care Home business. As previously noted, whether the document does create such an indemnity is not a matter I need to decide.

31. The following are relevant facts about the document relating to the decision I need to make. The title of the document gives the names of Donn Timmons and Caroline Williams only. Several clauses refer specifically to “both parties”. At the bottom of the document there is space for signatures of Donn Timmons and “Olive Williams authorised pp Caroline Williams”. On the next line, under the word “witnessed” is the signature of Brian Timmons. To the right of this, is the signature of Paul Williams. Donn Timmons sought to persuade me that Paul Williams was signing as a party to the agreement, rather than as a witness, and that references to “both parties” were to two groups of individuals rather than to the two parties of himself and Caroline Williams. This does not appear to me to be the natural reading of the document. The natural reading of the document is that it was a proposed settlement agreement between 2 parties: Donn Timmons and Caroline Williams, as named in the title to the document, and that Brian Timmons and Paul Williams signed as witnesses to the agreement and not as parties. Catherine, or Olive, Williams signed on behalf of her daughter. Caroline Timmons later signed the document herself. I find, on a balance of probabilities, that Paul and Catherine Williams were not parties to the agreement or proposed agreement represented by this document.

32. Donn Timmons remained on the bank loan for the business. He was told by Paul and Catherine Williams that simply removing his name from the loan was not possible. Donn Timmons says he agreed to remain on the loan on the basis that he would be indemnified from any future losses of the business. Clause 3 of the document states: “DT to remain as co-borrower of bank until a disposal of Hillside is effected but is to be indemnified from all/any liability arising from the continued operation of the business.”

33. The unaudited financial accounts for the Hillside Care Home business for the year ended 31 March 2016 state the partners of the business to be Caroline Williams and Donn Timmons.

34. The draft unaudited financial accounts for the year ended 31 March 2017 also stated the partners of the business to be Caroline Williams and Donn Timmons.

35. Both sets of accounts were prepared by Gortons, Chartered Accountants.

36. Jim Gordon FCA of Gortons, Chartered Accountants, prepared a report dated 12 September 2018 on the value of the interests of the parties, Donn Timmons and Caroline Williams in the Hillside Care Home business and related tax issues. The

introduction to the report stated that they had received joint instructions from the respective solicitors acting for Donn Timmons and Caroline Williams.

37. The joint letter of instruction, signed by solicitors for Mr Timmons and solicitors for Ms Williams, included the statement: “the care home is jointly owned by the parties. The wife runs a business although there is a partnership between the parties.”

38. The introduction further wrote that the instructions and report related to an unincorporated business (“Hillside Care Home”) carried on in partnership by the two parties since its acquisition in September 2008. This report was prepared for the court dealing with financial aspects of the divorce proceedings between Donn and Caroline Timmons.

39. Section 4 of the report included the following:

“Mr Timmons and Ms Williams jointly purchased the care home in September 2008. They have run the business ever since as an equal partnership (unincorporated) and there is no partnership agreement document that we are aware of. There are no other partners/owners involved.”

40. Section 4 further contained the statement that Ms Williams’s parents were heavily involved in the management of the business and were on the payroll as employees. The report stated that they had advanced funds to the business from time to time to assist with cash flow and set out the amount owing to them.

41. The report also noted that Gortons had acted as accountants and tax advisers for the business and both partners since the outset and their associate company looked after the businesses payroll. The report stated:

“Our liaison on a day-to-day basis is primarily with Paul Williams, as business manager, and although he approves payroll payments etc, he is not a partner and therefore not authorised to sign off or approve the business financial accounts or tax returns.”

42. Section 7 of the report contained the following statement:

“the partnership has always been a straightforward 50:50 split between Mr Timmons and Ms Williams.”

43. The report also contained the following:

“For the past few years, the taxable profits have been wholly allocated to Ms Williams (for income tax assessment purposes) on the specific instruction of both partners. The tax liabilities arising from business profits have therefore arisen on Ms Williams only, but tax liabilities have been paid from the business (and charge the joint capital account). Again, this is a matter for the partners.”

44. Jim Gorton concluded the report with confirmation that they understood their duty to the court and had complied with it and with a personal statement of truth.

45. Donn Timmons suggested in evidence that his solicitors had not been instructed by him on every point because of the stress he was under at the time. If Donn Timmons was intending to suggest, by this, that his solicitors had incorrectly stated the members of the partnership because of lack of proper instructions, I reject this evidence as being inherently implausible. Before writing such a joint letter of instructions, any competent solicitors would have made sure that they correctly understood what their client was saying about the members of the partnership and, therefore, the owners of the business which was to be valued. Also, Jim Gorton, who wrote the report, would no doubt have queried the statement about the partnership had this not accorded with his own understanding, formed over years advising the partners. I find that the statement about the members of the partnership in the letter of joint instruction and in the report correctly reflected what was Donn Timmons' understanding at the time i.e. that he and Caroline Williams jointly owned the business and were the only partners.

46. On 5 October 2018, the Hillside Care Home closed and the staff were all made redundant with effect from that date.

47. An administration order was made for the Hillside Care Home partnership, described as Caroline Timmons and Donn Timmons trading as Hillside Care Home, on 26 October 2018. Mr Lannagan and Mr Pearson of Mazars LLP were appointed joint administrators of the partnership. The application for the administration order was made by Paul and Catherine Williams as creditors of the business. The report prepared by Mazars LLP setting out their opinion in respect of the insolvent position of the Partnership and the grounds for believing that administration was appropriate, identified Caroline Williams and Donn Timmons as the partners in the business which formerly ran Hillside Care Home. Donn Timmons attended the hearing at which the administration order was made. Donn Timmons said, in cross examination, that he could not recall whether he asserted, at that hearing, that Paul and Catherine Williams were partners in the business. He said he could not recall if he had said he was no longer a partner. He then, with my permission, got out a written witness statement that he said he had presented during the administration hearing, which he had not included in his bundle of documents for this hearing. After looking through this statement, he said it did not say that he was not a partner. I said I would proceed on the basis that Donn Timmons did not raise at the administration hearing that he was no longer a partner in the business. I got copies made of the written statement for the tribunal and the parties but we did not return to this document during cross examination. I have subsequently read the statement. As Donn Timmons conceded, it does not assert that he had ceased to be a partner in the business. It does, however, assert: "The Applicants [i.e. Paul and Catherine Williams] are my partners and ex wife's parents." It appears, therefore, that Donn Timmons did raise, by means of this statement, an argument that Paul and Catherine Williams were partners in the business. However, it is implicit in writing that Paul and Catherine Williams "are my partners", that Don Timmons was accepting, at the time of the administration order application, that he had still been a partner at the time the business closed and the claimants were dismissed.

48. An HMRC notice to pay dated 5 November 2018 was addressed to Donn Timmons and Caroline Timmons.

49. On 23 November 2018, Jim Gorton, an accountant, wrote to Caroline Timmons as follows:

“You (and Donn) are partners in the “Hillside Care Home” partnership.

“For a number of years we have helped you with your personal tax affairs, and business accounting, management accounting, reporting to the bank on business taxation etc. We’ve done this through thick and thin, and on trust that we will get paid, with a large debt building up for work done.”

50. He went on to ask for payment of the total debt outstanding.

51. These tribunal proceedings were begun with the presentation of the claims on 5 January 2019.

52. The first respondent was declared bankrupt on 7 January 2019.

53. Donn Timmons wrote to the tribunal in response to the proceedings on 18 February 2019. He wrote that he believed he had been incorrectly named in the proceedings as the partnership between Caroline Timmons and he was dissolved in March 2016 under the agreement, a copy of which he attached. He asserted that the agreement dissolved the partnership and gave Caroline Timmons, Paul and Olive Williams full control of Hillside Care home. He requested to be removed from the proceedings.

54. On 25 February 2019, Donn Timmons wrote to Daniel Fleming of Mazars, stating that, following legal advice, he had been advised that following the agreement between Caroline and him in March 2016, the partnership at that stage would have been dissolved.

55. An email from DonnTimmons to Daniel Fleming of Mazars dated 13 March 2019 contains the assertion that: “Paul and Olive have been actively in control of the business from its conception, negotiating the loan through HSBC, fundraising for the business and also investing in the business. The actions of Paul and Olive Williams make them clear shadow partners of the business.” Donn Timmons asked Mr Fleming, as an officer of the court, to review the partners of the Care Home, asserting that this would clearly identify Paul and Olive Williams as partners. He requested that Paul and Catherine Williams be added to the list of partners with Caroline Williams and that he be removed.

56. On 19 March 2019, Donn Timmons wrote again to the employment tribunal. He asserted in this letter that Caroline, Paul and Catherine Williams assumed sole responsibility for Hillside in 2016. He wrote that he believed this made them the employers of the claimants and that he should be removed as a respondent. He wrote:

“In reality, Paul and Catherine Williams have actively been involved as partners of the business since its conception and I have recently written to the administrators to investigate this and have attached a copy of the email sent to Daniel Williams of Mazars for your attention.”

57. On 28 March 2018, a hearing was held in the employment tribunal and Employment Judge Tom Ryan made the order to include Paul and Catherine Williams as additional respondents, providing that, if any respondent wished to assert that they were not partners or proprietors responsible for any sums owed to the claimants as employees and as claimed in these proceedings, they must set out in their response the facts and matters on which they relied.

58. Paul and Catherine Williams responded by a letter dated 29 April 2019, which has been accepted as a response in these proceedings. They rejected the assertion that they had been partners in the business of Hillside Care Home. Donn Timmons presented a response form on 9 May 2019. He attached a “response of Donn Timmons” document, which is in similar form to the document relied on as his witness statement at this hearing.

59. On 12 April 2019, Jim Gorton wrote to Donn Timmons. He wrote that it seemed fairly clear-cut that Donn Timmons was a partner in the partnership, notwithstanding the March 2016 indemnity agreement, which he stated was an entirely separate matter. He wrote:

“Partner status of Paul and Olive

- a. We believe that the commercial reality is that Hillside always was the business of Paul and Olive Williams, but put in the name of Caroline and yourself. They guaranteed the debt, ran the business, had the prior business sector experience etc. etc.
- b. We believe that they are de facto partners in the business, and therefore jointly and severally liable for the partnership debts, along with you and Caroline.
- c. But our belief is irrelevant.
- d. It’s a country mile away from being able to prove in a court of law the Paul and Olive are actually business partners in a legally binding sense, such that there liable for the partnership’s debts.”

60. I have seen no evidence that suggests to me that Paul and Catherine Williams took any “drawings” from the business at any time. Rather, the evidence is that they put in money to support the business. A Mazars report recorded that they were creditors of the partnership in the sum of £99,027, arising from loans and advances made by them to the partnership between 2013 and 2018 for the purpose of cash flow funding.

61. Caroline Williams took substantial drawings from the business: £127,638 in the year ending 31 March 2017 and £92,159.62 in the period January to March 2018.

62. A Mazars report, referred to by the claimants, state that management accounts covering the 15 month period to 30 June 2018, indicated that a net profit of £127,742 was achieved in this period. The report recorded that, as a result of a review by Mazars in September 2018, it was concluded that the Partnership was insolvent on both a balance sheet basis and a cash flow basis. Based on the available financial information, the Partnership had net liabilities of £485k and funds in hand of circa £14k.

63. At some stage (the exact date being unclear), staff were instructed by Catherine Williams not to allow Donn Timmons on the premises of the Hillside Care Home if she or Paul Williams were not there.

64. Catherine Williams, on occasion, signed contracts of employment on behalf of the partnership.

Submissions

65. Mr Francis, for Paul and Catherine Williams made written submissions, supplemented by oral submissions. He submitted that Paul and Catherine Williams were not members of the partnership and, therefore, not the claimants' employers and not proper respondents in this case.

66. Mr Francis submitted that it was clear, on the evidence, that Paul and Catherine Williams were not carrying on a business in common with Donn Timmons and Caroline Williams with a view to profit and were not, therefore, members of the partnership. They were employees. The fact they acted as guarantors of the bank loan did not make them partners in the business.

67. Don Timmons made oral submissions. He submitted that he had no drawings after 2012. He submitted that the business was a partnership but in form only; this was almost a legal fiction. In reality, this was Paul and Catherine Williams' business. The business was a mechanism to transfer money to Caroline Williams. Donn Timmons submitted that he had no benefit from the business; he had sold his rights to it. He should not be a partner because he did not get any profit.

68. Mr Dan Williams made oral submissions on behalf of all the claimants. He said they felt they were dragged into a family feud which staff should not be involved into. He said that, at the last preliminary hearing, the judge and staff thought that Paul Williams and Catherine Williams should be involved. The claimant believed that Paul and Catherine Williams were truly involved in the business.

Law

69. Section 1(1) of the Partnership Act 1890 provides that:

“Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.”

70. No written agreement, or partnership deed, is needed to create a partnership.

71. Section 32 of the Partnership Act 1890 provides that:

“Subject to any agreement between the partners, a partnership is dissolved –

....

(c) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership.

In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.”

72. In the case of a partnership at will, notice of dissolution may be given by any partner at any time. The notice can be instantaneous. A dissolution notice must be clear and unambiguous. Notice can be written or oral. It is possible that a dissolution of a partnership at will can be inferred from circumstances, even though no notice to dissolve may have been given, but a court will not be too ready to infer a dissolution. A partnership may continue notwithstanding the fact that one partner might have ceased to participate actively in the partnership business, either wilfully or due to circumstances beyond their control.

73. A change in the composition of a partnership results in a dissolution of the existing firm and the creation of a new firm.

Conclusions

74. Donn Timmons’ position in these proceedings as to when he ceased to be a partner and when Paul and Catherine Williams became partners has not been consistent.

75. Donn Timmons was still a partner when the claimants were dismissed. He said first in evidence that he ceased to be a partner when he was shut out of the business in 2012. He then said he was “legally” a partner until March 2016, with the agreement I refer to in paragraph 29.

76. When I asked Donn Timmons whether he said that Paul and Catherine Williams became partners in March 2016 and were not before, he said he was not legally represented and found it difficult to answer that question; he knew that, in March 2016, the business was given to the three of them. When referred by counsel to what he was recorded as asserting in the order from the preliminary hearing, which suggested that he was saying all four of them were in partnership until he was discharged from his obligations in or about March 2016, Donn Timmons disputed that was what he had said, saying that was what had been put down.

77. It appears to be Donn Timmons’ position that he ceased to be a partner no later than March 2016 (the date of the proposed settlement agreement) and that Paul and Catherine Williams were partners in the business either from the outset, in 2008, or from the date the proposed settlement agreement was signed, in March 2016.

78. It appears to me, on the basis of the respondents' various positions, that there are the following possibilities:

- 78.1. The partners in the Hillside Care Home business (the business) from 2008 were, and remained at the date the claimants were dismissed, Donn Timmons and Caroline Williams. Paul and Catherine Williams were never partners in the business. This is the position taken by the third and fourth respondents.
- 78.2. The partners in the business from 2008 were Donn Timmons and Caroline Williams and, at some point prior to the claimants' dismissal, most likely in March 2016, this partnership was dissolved and a new partnership of Donn Timmons, Caroline Williams, Paul Williams and Catherine Williams was formed. All four of these were partners in the business at the time the claimants were dismissed.
- 78.3. The partners in the business from 2008 were Donn Timmons and Caroline Williams and, at some point prior to the claimants' dismissal, most likely in March 2016, this partnership was dissolved and a new partnership of Caroline Williams, Paul Williams and Catherine Williams was formed and Donn Timmons ceased to be a partner. The partners at the date of the claimants' dismissal were Caroline Williams, Paul Williams and Catherine Williams. This seems to be one of the positions taken by Donn Timmons on the facts, although he has not put it in these legal terms.
- 78.4. The partners in the business from 2008 were Donn Timmons, Caroline Williams, Paul Williams and Catherine Williams and these four continued to be the partners at the time the claimants were dismissed.
- 78.5. The partners in the business from 2008 were Donn Timmons, Caroline Williams, Paul Williams and Catherine Williams and this partnership was dissolved at some point prior to the claimants' dismissal, most likely in March 2016, and a new partnership was formed of Caroline Williams, Paul Williams and Catherine Williams. The partners at the date of the claimants' dismissal were Caroline Williams, Paul Williams and Catherine Williams. This seems to be one of the positions taken by Donn Timmons on the facts, although he has not put it in these legal terms.

79. There is no dispute that Donn Timmons and Caroline Timmons were either the only partners or two of the partners in the business at the outset, when the Hillside Care Home was purchased in 2008. There appears to be an issue as to whether Paul and Catherine Williams were also partners in the business from 2008.

80. Paul and Catherine Williams were actively involved in the running of the business. They also loaned start-up capital and guaranteed the bank loan. However, this type of involvement does not mean they were partners. They would only be partners if they were carrying on a business with Donn Timmons and Caroline Timmons in common with a view of profit.

81. I have not found any evidence that Paul and Catherine Williams took any drawings from the business, unlike Donn Timmons and Caroline Timmons, who had drawings paid into their joint account prior to their separation in 2012. The business was purchased in the names of Donn Timmons and Caroline Timmons. The CQC registration was in their names. All other documentation I have seen was consistent with the partners being only Donn Timmons and Caroline Timmons and not including Paul and Catherine Williams.

82. I conclude that Paul and Catherine Williams were not carrying on a business with Donn Timmons and Caroline Timmons with a view of profit from 2008. I conclude that the partnership beginning in 2008 was between Donn Timmons and Caroline Williams and not with Paul and Catherine Williams.

83. Did this position change after the separation? I conclude that it did not. Although it appears Donn Timmons ceased to receive drawings, I have seen nothing to suggest that he did not remain entitled to them, unless he agreed to forego these in favour of Caroline Williams. Indeed, his correspondence following the separation asserts a right to drawings and that he is a partner, 50:50 with Caroline Williams, and the employer of Paul and Catherine Williams, rather than in partnership with them (see paragraphs 25, 26, 27, 28 and 29). Donn Timmons has asserted that this correspondence was a tactic to try to get access to his children. Even if this is the case, it does not mean that Donn Timmons did not still believe himself to be a partner in the business and that Catherine and Paul Williams were not partners. There is no evidence of notice of dissolution of the partnership and the formation of a new partnership. Catherine and Paul Williams continued to be remunerated by means of salary payments and not drawings. There is no evidence to suggest that, in the period from 2012 until the March 2016 document (which I will consider next), there was a dissolution of the partnership between Caroline Williams and Don Timmons and the formation of a new partnership of Caroline Williams with her parents, with or without Donn Timmons as a partner.

84. Donn Timmons has placed considerable reliance on the March 2016 document. If there was a dissolution of the partnership of Donn Timmons and Caroline Williams and the formation of a new partnership, including Catherine and Paul Williams, with or without Donn Timmons, this appears, on Donn Timmons' case, to be the most likely time for this to occur. There are two elements to consider: whether Donn Timmons ceased to be a partner and whether Catherine and Paul Williams became a partner. It is not in dispute that Caroline Williams continued to be a partner in the business. The issue I have to decide in this hearing is whether Catherine and Paul Williams were partners in the business at the time the claimants were dismissed. It appears to me to be necessary, however, for the purposes of making this decision, to also decide whether Donn Timmons ceased to be a partner. I need to decide, as a matter of fact and law, whether the partnership between Donn Timmons and Caroline Williams dissolved at the time of the March 2016 agreement and whether a new partnership was formed and, if so, who the members of this partnership were.

85. I have found, as a matter of fact, that the agreement or proposed agreement set out in the March 2016 document was between two parties: Donn Timmons and Caroline Williams. I have found that Paul and Catherine Williams were not parties to the agreement or proposed agreement (see paragraph 31). Any agreement reached

by this document cannot, therefore, include the formation of a new partnership including Paul and Catherine Williams.

86. What followed the signing of the March 2016 document is consistent with Donn and Caroline Williams remaining the only partners in the business and Paul and Catherine Williams not having become partners. Paul and Catherine Williams remained remunerated by way of PAYE salary payments, not partners' drawings. They remained actively involved in the running of the business and made further loans to the business. This level of involvement does not, however, indicate that they were carrying on a business with Donn Timmons and Caroline Williams with a view of profit. Looking at the level of drawings taken from the business by Caroline Williams and the loans made to the business by her parents, Donn Williams' view that the business was being used as a means to transfer money from Paul and Catherine Williams to their daughter is understandable. However, whether or not this was the intention, it does not mean that Paul and Catherine Williams were partners in the business.

87. What followed is also consistent with Donn Timmons remaining a partner in the business. He was never very actively involved in the business and, if there was a reduction in his level of participation in partnership business, this does not, of itself, indicate that he was not still a partner. None of the evidence suggests to me that there was a dissolution of the partnership between Donn Timmons and Caroline Williams. The partnership of Donn Timmons and Caroline Williams continued to be identified in the financial records of the business and official documentation, such as from HMRC. Donn Timmons remained joint owner, with Caroline Williams, of the business property. He remained on the bank loan, together with Caroline Williams. He was still entitled to drawings, even if he did not receive this, unless he had agreed to forego these. Perhaps most significantly, the joint instructions from Donn Timmons' solicitor and Caroline Williams' solicitor, for a joint expert report on the valuation of the business, and the expert report by Jim Gorton FCA, who had been involved, for many years in advising the business and its partners, stated that the business was a partnership between Donn Timmons and Caroline Williams, with no mention of Paul and Catherine Williams also being partners in the business. I have found that the statements about the partnership in the letter of joint instruction and the report of Jim Gorton correctly reflected Donn Timmons' understanding at the time that only he and Caroline Williams were partners in the business (see paragraph 45).

88. I conclude that the March 2016 document did not dissolve the partnership between Donn Timmons and Caroline Williams and create another partnership including Paul and Catherine Williams, with or without Donn Timmons as a member. I conclude that Paul and Catherine Williams were not partners in the business at any time up to and including the time the claimants were dismissed. Since they were not partners in the business at the time the claimants were dismissed, they cannot be liable for any award which may be made in favour of the claimants and are not properly named as respondents. I, therefore, remove Paul and Catherine Williams, the third and fourth respondents, as respondents to the claims.

89. The claims will proceed with Caroline Timmons and Donn Timmons as respondents. Case management orders will be set out in a separate document and steps taken to list the claims for a final hearing.

Employment Judge Slater

Date: 11 November 2019

RESERVED JUDGMENT & REASONS
SENT TO THE PARTIES ON

29 November 2019

FOR THE TRIBUNAL OFFICE

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Schedule of Claims

Case No	Claimant
2400060	2019 Williams D Mr
2400061	2019 Williams D Mr
2400062	2019 Brooks V Mrs
2400063	2019 Murphy D Mrs
2400064	2019 Cleary L Mrs
2400065	2019 Wood S Miss
2400066	2019 Williams D Mrs
2400067	2019 Cowan M Mr
2400068	2019 Jennings P Mrs
2400069	2019 Makin C Mrs
2400070	2019 O'Neil G Mrs
2400071	2019 Jones R Mrs
2400072	2019 Dabti J Ms