Neutral Citation Number: [2021] EWHC 3332 (Ch)

IN THE COUNTY COURT AT LEEDS
BUSINESS AND PROPERTY WORK

CLAIM No. F80LS112

Leeds Combined Court Centre
The Courthouse
Leeds
LS1 3BG

Dated: 9th December 2021

Before:
RECORDER CLAYTON

Between:

JOSEPHINE BURNETT

Claimant

-and-

ANTHONY BARKER

Defendant

Alfred Weiss (instructed by **Ison Harrison, Solicitors**) for the **Claimant**
Steven Fennell (instructed by **Schofield Sweeney, Solicitors**) for the **Defendant**

Sitting at Cloth Hall Court, Quebec Street, Leeds LS1 2HA
Hearing dates: 25th, 26th, 28th, 29th October 2021

APPROVED JUDGMENT

"Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII . The date and time for hand-down is deemed to be 10:00am, Thursday 9th December 2021."

Recorder Clayton:

INTRODUCTION

1. This is my judgment on the trial of some preliminary issues which have been directed to be heard in connection with an alleged partnership dispute.

2. The Claimant alleges that since 2008 she and the Defendant carried on in business as partners, trading as 'Site Rescue', principally providing first aid and fire safety services at events, but that following a breakdown in their relationship, she gave notice of dissolution of the partnership by letter dated 4th October 2019. Her primary claim is for the partnership to be wound up and for accounts and inquiries to be taken. Alternatively, she claims compensation for the value of services provided by her to Site Rescue.

3. The Defendant denies that he carried on the business of Site Rescue in partnership with the Claimant and says that he was a sole trader. He also denies the alternative claim for compensation. Although he accepts that the Claimant is in principle entitled to reasonable remuneration for the services she has provided, he says she has already been remunerated for the work done by her. The Claimant denies this.

4. The case was allocated to the multi-track on 11th June 2020 with directions for the trial of the following preliminary issues:

> Did the Claimant and Defendant carry on the business together with a view of profit such that a partnership arose pursuant to section 1(1) of the Partnership Act 1890?
>
> (a) If so:
>
> (i) What are the partners' respective shares?
>
> (ii) What directions should be given for the account to be taken on the dissolution of the partnership?
>
> (b) If not:
>
> (i) On what basis is the reasonable value of the Claimant's services to the Defendant to be determined?
>
> (ii) What directions should be given for an account to determine the value of such services?

5. The preliminary issues were listed for trial before me as an attended hearing at Cloth Hall Court, Leeds over five days from 25th October 2021 although because of issues with timetabling and the availability of witnesses, it in fact only took four days with evidence over three days and submissions on the fourth day. Given the quantity and content of the evidence, documentation and submissions I reserved this judgment.

REPRESENTATION AND ATTENDANCE

6. Mr Alfred Weiss of Counsel appeared for the Claimant on the instructions of Ison Harrison, Solicitors. He produced the Claimant together with five other witnesses: Donna Lumb who worked as the Claimant's office manager at BTS Europe Ltd since 2004; Gary Turner who was employed by Site Rescue as an operations manager between July 2018 and January 2019 (and subsequently worked for the Claimant); Katie Thornton who was employed by Site Rescue as an advanced first aider from May 2016 and subsequently worked for the Claimant until leaving in June 2020; Oliver Dennis who was employed

by Site Rescue as a motor mechanic between November 2015 and March 2019; and Shaun Kavanagh who initially set up the BTS business before incorporating it as BTS (Europe) Limited in 2007 before giving up the business to the Claimant in 2009. I had the benefit of witness statements from each of them and they were called to give oral evidence.

7. Mr Steven Fennell of Counsel appeared for the Defendant on the instructions of Schofield Sweeney, Solicitors. He produced the Defendant together with three other witnesses – Alan Yourston, who had been a customer of Site Rescue since 2001; Alan Brooks who sold a business to the Defendant in 2016 and subsequently worked for Site Rescue on a part-time basis; and Peter Rich, who had freelanced as a first aider for Site Rescue since 2012. Again, I had the benefit of witness statements from each of them, and they were called to give oral evidence. I was also referred to two other witness statements, from Brent Mitchell, whose business had been a customer of Site Rescue since 2011; and Jaie Genadt who had also been a customer of Site Rescue. I had signed statements from them, but they were unable to attend. Even without a hearsay notice, I indicated that I would admit their statements under s 1 Civil Evidence Act 1995, but in the absence of attendance for cross-examination, I would attach much less weight to them.

8. I was provided with extensive disclosure documentation which, together with the statements of case, orders and other documents, and the witness statements, ran to seven full lever arch files (3121 pages, with sub-pages).

9. I was also provided with helpful Skeleton Arguments from Counsel, and an agreed bundle of authorities, for which I am grateful.

APPROACH

10. In respect of the first preliminary issue of whether or not there was a partnership, and if so the parties' respective shares, it is common ground that there was nothing in writing and no fixed term so that whether or not there was a partnership at will and if so on what terms is a mixed question of law and fact which largely depends on (1) the legal principles to be applied, and (2) my findings of fact on the evidence (*Lindley & Banks on Partnership, 20th Edition, para 7-11 etc*). I will call this the Partnership Claim.

11. A particular issue arose about the scope of the preliminary issue on the Partnership Claim.

12. The Claimant's pleaded claim in paragraph 12 of the Particulars of Claim is that in 2008 the Defendant relocated the administration and accounts function of Site Rescue to Leeds where it was undertaken by the Claimant, who devoted 10 to 15 hours per week of her time to the business.

13. Then in paragraph 13 of the Particulars of Claim the Claimant pleaded her case on the inception of the partnership in these terms:

> 13. In consideration for the Claimant providing her services to Site Rescue as aforesaid, the Defendant agreed that the business of Site Rescue became that of him and the Claimant jointly. The Claimant and the Defendant agreed that they would together carry on and grow the

business of Site Rescue, with a view to profit. This was the inception of the partnership in 2008.

14. The Claimant then went on in paragraph 14 of the Particulars of Claim to list the services she provided.

15. It will be seen that the scope of the preliminary issue in respect of the partnership was cast in fairly wide terms – whether the Claimant and Defendant carried on in business in partnership, and if so, their respective shares, with directions for an account, and it is clear from the range of disclosure and evidence that the parties prepared for, and attended this hearing, in order to deal with the preliminary issue in those wide terms.

16. However, in paragraph 10.2.1 of his Skeleton Argument served shortly before trial, Mr Weiss for the Claimant put the Claimant's case in a slightly different way, namely that *from* 2008 onwards, there was an *implied* agreement that the Claimant and Defendant operated Site Rescue as a partnership, for their mutual benefit, which agreement can be *inferred* from their conduct, and consistent with that, he went on to identify the range of evidence, principally the Claimant's role in the business, from which he submitted I could infer an implied agreement to carry on in business as partners.

17. In paragraph 19 of his Skeleton Argument, also served shortly before trial, Mr Fennell for the Defendant said that the question for the court is whether the Claimant's role in the business is that of a partner, or a combination of an independent contractor remunerated as such and/or as a volunteer who assisted the Defendant because of their personal relationship. At paragraph 20 he went on to point out that the Claimant's pleaded case was that "*in consideration for the Claimant providing her services to Site Rescue as aforesaid, the Defendant agreed that the business of Site Rescue became that of him and the Claimant jointly*". He said that the Defence challenged the Claimant's failure to particularise the details of the alleged agreement and that there had been no application to amend to provide further particulars. He said that the Claimant's case remains based on the existence of the alleged agreement, and he went on to make submissions about this, as well as going on to comment on other evidence including the parties' conduct.

18. There was some, limited, discussion about this at the beginning of the trial.

19. However, after the close of evidence on the third day, Mr Fennell for the Defendant circulated some additional authorities which, on the face of it, raised a potential pleading point, and I heard Counsel's submissions about them at the beginning of the fourth day.

20. The main authority relied on by Mr Fennell was *Greville v Venables* [2007] EWCA Civ 878. There are many similarities between that case and the present. In that case, the claimant alleged that he and the defendant had carried on an equine business in partnership, with his pleaded case being that it was pursuant to an oral agreement made in or about March 2004. The court subsequently directed a number of preliminary issues, including whether the claimant and defendant carried on the business in partnership. As Lloyd LJ noted (para [14]), that was not tied to the formulation of the partnership by way of express agreement. At trial the judge (His Honour Judge Wyn Williams QC) concluded not only that there had been no agreement as alleged, but also, having heard the evidence and deciding that he should deal with the point, that a partnership could not be implied from conduct either (no doubt with half an eye on the prospect that the

claimant would apply to amend his claim to take the point at a later stage if he did not deal with it). The claimant appealed, and also applied to amend his Particulars of Claim. In the Court of Appeal, Lloyd LJ, with whom Thomas and Pill LJJ agreed, affirmed the judge's finding that the parties did not reach an agreement to carry on in business in partnership, as alleged, and also that having reviewed the dealings between the parties, a finding of a partnership by implication from conduct, which would involve saying that an agreement is to be implied from conduct, would fly in the face of those dealings (para [40]). However, Lloyd LJ then acknowledged that in dealing with the point of partnership by implied agreement, he had passed by the preliminary question of whether the claimant should be entitled to contend at all that there was a partnership on any other basis than the oral agreement in March 2004 which he alleged in the particulars of claim (para [42]). As to this, Lloyd LJ (with whom Thomas and Pill LJJ both agreed, giving separate short judgments) said that it was not open to the claimant to rely on such an alternative case without applying to amend his particulars of claim, which he should probably have done before the trial of the preliminary issue and that equally, it was not necessary or appropriate for the judge to consider any other basis on which the partnership might be proved (para [43]). The appeal was dismissed.

21. A similar point arose in the second authority relied on by Mr Fennell, *Al-Medenni v Mars UK Ltd* [2005] EWCA Civ 1041. This was a claim for damages for personal injuries suffered by the claimant in an accident at work in which her pleaded case alleged negligence by a named servant or agent of the defendant whereas the defendant alleged the accident was caused by the claimant's own negligence. Having heard the evidence, the trial judge went on to find for the claimant on the basis that the accident was caused by a 'third man', but on appeal, he was heavily criticised for straying from the pleadings with Dyson LJ saying (para [21]) that the judge was not entitled to find for the claimant on the basis of the third man theory. He said it is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation.

22. For completeness, Mr Fennell also produced *Khan v Miah* [2000] 1 WLR 2123 which is referred to in *Greville v Venables*.

23. So, perhaps not surprisingly, I raised with Counsel whether there was a pleading point on the basis that notwithstanding the wide terms of the preliminary issue, the pleaded claim was that there was an agreement in 2008, whereas in Mr Weiss's Skeleton Argument, he was contending that I could imply an agreement from conduct from 2008 onwards. As I have said, the two seemed to me to be slightly different.

24. With all the ingenuity of Commercial Counsel, Mr Weiss said that I could read paragraph 13 of the Particulars of Claim as meaning that there was an implied agreement in 2008 as (to use his expression) "illuminated" by their subsequent conduct. He said that on this basis, he was content to run his case as pleaded in paragraphs 12 and 13 of the Particulars of Claim, and that he was not applying for permission to amend.

25. Mr Fennell said that he was content for me to deal with the case on this basis, provided the Claimant was confined to her pleaded case in paragraphs 12 and 13.

26. I have to say, I am not entirely convinced by this approach. It seems to me that on a fair reading of paragraph 13 of the Particulars of Claim, what the Claimant was contending was that she and the Defendant actually reached an agreement in 2008. Had her case been

that the court could imply an agreement in 2008 based on subsequent conduct, I would have expected that to have been pleaded, with particulars of the conduct relied on, so that the parties knew the case they had to meet. That said, I acknowledge that paragraph 13 did not provide any particulars of whether the agreement was made in writing or orally, either. The point was taken by the Defendant in paragraph 7(a) of the Defence, referring to CPR PD 16, paras 7.4 and 7.5, but was not really dealt with in paragraph 4 of the Claimant's Reply, save to repeat that in or around 2008 the Claimant and Defendant agreed that the Claimant would provide services to the business as pleaded, and that it was always understood and agreed between the Claimant and the Defendant that they would jointly benefit from the growth of the business.

27. I do not want to get side-tracked with this, nor do I want to make the same mistake that His Honour Judge Wyn Williams QC made in *Greville v Venables* and end up dealing with a point that has not been pleaded. I think that the Claimant could have pleaded her case a little more clearly, but on the basis that Mr Weiss is content to confine his claim to an agreement in 2008, albeit one which I must imply from conduct, and that Mr Fennell is content to proceed with the claim on this basis, then so be it, I will get on and deal with it on this basis.

28. So, subject to that clarification, whether or not I can imply a partnership at will and if so on what terms is a mixed question of law and fact which largely depends on (1) the legal principles to be applied, and (2) my findings of fact on the evidence.

29. Similarly, in respect of the alternative claim for compensation based on quantum meruit. The preliminary issue requires me to decide on what basis the reasonable value of the Claimant's services to the Defendant is to be determined, before going on to consider appropriate directions. This is also a mixed question of law and fact which again will depend on (1) the legal principles to be applied, and (2) my findings of fact. I will call this the Alternative Claim.

30. The Claimant's pleaded claim for compensation was for payment for the services provided by her on a quantum meruit basis (Particulars of Claim, para 27). As to this, the Defendant's case was that there was an oral agreement reached in 2008 that the Claimant would provide administrative services to Site Rescue and that the cost of such services would be cross-charged to Site Rescue (Defence, para 7(b) and 9(a)). It was admitted that this entitled the Claimant to reasonable remuneration for the work done by her (Defence, para 24), but it was the Defendant's case that she had already been remunerated for the work done by her by way of cross-charging (Defence, para 14). Having regard to this, it is now common ground between Counsel that the Claimant's entitlement (if any) is in contract, on the basis of an express or implied term that she is entitled to reasonable remuneration for the services provided by her. It is also common ground that for the purposes of the preliminary issue on the Alternative Claim, I still have to determine whether the Claimant has already been remunerated for those services etc. before going on to consider what directions to make.

31. In respect of both the Partnership Claim and the Alternative Claim therefore, it may assist for me to begin with the law in respect of both claims; then go on to deal with the evidence and my findings of fact before giving my conclusions and dealing with the form of order.

LAW

(1) THE PARTNERSHIP CLAIM

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

> *Definition of partnership*
>
> 1. (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

33. From the statutory definition it appears that before a partnership can be said to exist, three conditions must be satisfied, i.e. there must be:

> (1) a business;
>
> (2) which is carried on by two or more persons in common;
>
> (3) with "a view of profit"
>
> (*Lindley & Banks, para 2-01*).

34. In this case, it is common ground that there was a business, that of Site Rescue, which was being carried on with a view of profit. The issue is whether it was carried on by the Claimant and Defendant in common.

35. This necessarily means that there must be a single business and (according to the editor of *Lindley & Banks*) it presupposes that the parties are carrying on that business *together* for their common benefit and, thus, that they have, as regards the business, expressly or impliedly accepted *some* level of mutual rights and obligations as between themselves. But if, on a true analysis, each supposed partner is carrying on a separate business wholly independent of each other, where one is supplying consultancy or other services to the other, there can in law be no partnership between them. Equally, joint venturers will not necessarily be partners (*Lindley & Banks, para 2-07*).

36. There are various 'normal incidents' of partnership, including mutual agency, participation in profits, sharing of losses, and common capital, although some care needs to be taken that these are not treated as prerequisites to the existence of a partnership (*Lindley & Banks, paras 2-14 – 2-15*), and I bear in mind, for example, that an agreement for a person to be paid a specified sum for work to be done by him on behalf of a firm does not preclude him thereby becoming a partner in it (*M Young Legal Associates Ltd v Zahid* [2006] 1 WLR 2562 per Wilson LJ at [32]).

37. Fundamentally, partnership is a contractual relationship, or a relationship resulting from a contract, whether express or implied, which has been described as a continuing personal as well as commercial relationship. Like any other contract, the terms must be sufficiently certain, so that where it is found that alleged partners have either reached no binding agreement, or specifically agreed *not* to enter into a partnership, or one of them has expressly declined to enter into a partnership agreement, the existence of a partnership is unlikely to be inferred from their conduct (*Lindley & Banks, para 2-17*).

38. As to the distinction between express and implied contracts, *Chitty on Contracts, 34th Edition, Vol 1, para 1-047* says that the difference is not one of legal effect but simply of the way in which the consent of the parties is manifested. Express and implied contracts are both contracts in the true sense for they both arise from the agreement of the parties, though in one case the agreement is manifested in words and in the other by conduct. In respect of implied contracts, in *Blackpool & Fylde Aero Club Ltd v Blackpool Borough Council* [1990] 1 WLR 1195, Bingham LJ said this (at p 1202 F):

> I readily accept that contracts are not to be lightly implied. Having examined what the parties said and did, the court must be able to conclude with confidence both that the parties intended to create contractual relations and that the agreement was to the effect contended for.

39. Section 2 of the Partnership Act 1890 sets out certain rules for determining the existence of a partnership:

Rules for determining existence of partnership

2. In determining whether a partnership does or does not exist regard shall be had to the following rules:

(1) Joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

(2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

(3) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business does not of itself make him a partner in the business; and in particular –

(a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;

(b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;

(c) A person being the widow, widower, surviving civil partner or child of a deceased partner, and receiving by way of an annuity a portion of the profits made in the business which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;

(d) The advance of money by way of a loan to a person engaged or about to engage in any business on a contract with that person that the lender shall

receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto;

(e) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

40. With one exception (the receipt of a share of profits), the above rules are formulated as negative propositions and merely establish the evidential weight to be attached where the particular facts of a case precisely duplicate those set out in the section. However, it will rarely, if ever, be possible to divorce those facts from the surrounding circumstances so as to permit the statutory rules to be applied in their pure form. Fundamentally, in determining the existence of a partnership, regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case (*Lindley & Banks, para 5-03*).

41. There is some further guidance about the evidence required to prove a partnership in *Lindley & Banks, Chapter 7* and in particular the types of 'usual' evidence relied on in *para 7-23 etc* including (so far as likely to be relevant here): accounts (draft or final); advertisements; agreements and other documents; bills, circulars and invoices; brochures; conduct; holding out; joint bank accounts; joint property; letters and memoranda; meetings; profit share; tax returns; use of property; wages; and witnesses.

42. Although conduct is clearly relevant (and is critical in this case), it will not be determinative, particularly if it can be demonstrated that there was actually no intention to create a partnership. As to witness evidence (which is also relied on) – a witness may be asked whether named individuals compose the firm.

43. Finally in respect of the Partnership Claim, if I am able to make a finding that a partnership existed, the interests of the partners in the partnership property and their rights and duties in relation to the partnership are to be determined, subject to any agreement express or implied between the partners, by the rules set out in s 24 Partnership Act 1890, and principally on the basis that all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.

(2) THE ALTERNATIVE CLAIM

44. There is a distinction between a claim in contract and a claim in unjust enrichment. I was helpfully referred to passages in *Energy Venture Partners Ltd v Malabu Oil and Gas Ltd* [2013] EWHC 2118 (Comm) per Gloster LJ at para [281] and the Court of Appeal decision in *Benedetti v Sawiris* [2010] EWCA Civ 1427 per Etherton LJ at para [140]. The distinction is also explained in *Goff & Jones: The Law of Unjust Enrichment, 9th Edition, para 1-36* etc with a note that litigants should make it clear which type of claim they are bringing.

45. In the *Energy Venture Partners* case Gloster LJ said:

> 281. There is no dispute between the parties that there is an important distinction between: (a) the situation where the court has to determine what is a reasonable sum, in a case where a contract either expressly or impliedly provides that a reasonable sum shall be payable, and (b) the situation where the court is having to assess what is the appropriate figure to award a claimant by way of quantum meruit, in a restitutionary claim for unjust enrichment. In the former, the assessment of such a claim will depend upon all of the circumstances, the objective being to ascertain what the parties to the contract would have considered to have been a reasonable amount. In contrast, the objective in a restitutionary quantum meruit assessment is to reverse the unjust enrichment of a defendant, with the measure of any award reflecting the benefit that the defendant of the services received.

46. In the Court of Appeal decision in *Benedetti v Sawiris*, Etherton LJ said:

> 140. Judicial decisions and academic commentary in recent times have clarified that a quantum meruit claim is a restitutionary claim for unjust enrichment. The amount recoverable by a claimant is the objective value of the benefit at the time of receipt, namely the price which a reasonable person in the defendant's position would have had to pay for the services. <u>It is to be contrasted with an express or implied contractual term to pay a reasonable amount for services provided pursuant to the contract. In such a case, the court can have regard to all the circumstances to determine what would be a reasonable amount as contemplated by the parties to the contract.</u> (Emphasis added)

47. See now the Supreme Court decision in *Benedetti v Sawiris* [2014] AC 938 in which Lord Clarke said:

> *The legal principles*
>
> 9. It is common ground that the correct approach to the amount to be paid by way of a quantum meruit where there is no valid and subsisting contract between the parties is to ask whether the defendant has been unjustly enriched and, if so, to what extent. The position is different if there is a contract between the parties. Thus, if A consults, say, a private doctor or a lawyer for advice there will ordinarily be a contract between them. Often the amount of his or her remuneration is not spelled out. In those circumstances, assuming there is a contract at all, the law will normally imply a term into the agreement that the remuneration will be reasonable in all the circumstances. A claim for such remuneration has sometimes been referred to as a claim for a quantum meruit. In such a case, while it is no doubt relevant to have regard to the benefit to the defendant, the focus is not on the benefit to the defendant in the way in which it is where there is no such contract. In a contractual claim the focus would in principle be on the intentions of the parties (objectively ascertained).

EVIDENCE

48. I acknowledge first of all that since this is a fact-sensitive case which largely depends on the evidence, it may be appropriate to begin by mapping out the range of evidence I received and commenting in general on the witness evidence.

49. The vast majority of the relevant evidence was given by the parties themselves.

50. The Claimant produced an extremely detailed witness statement which contained a considerable amount of information about the day to day workings of the various businesses, especially Site Rescue. It provided quite a bit of commentary on the arrangements they had, but tended to focus on the detailed arrangements for the day to day running of the businesses and the nature and extent of the work she did for Site Rescue by reference to fairly substantial exhibits including (amongst other things):

    - Exhibit JB7 – her user entries on PARiM (PARiM is workforce software to engage temporary staff)
    - Exhibit JB12 – excel spreadsheet of payments made by the Claimant or BTS to Site Rescue since 2008
    - Exhibit JB13 – excel spreadsheet of payments made by Site Rescue to the Claimant or BTS since 2008
    - Exhibit JB14 – excel spreadsheet of BTS invoices to Site Rescue since 2008
    - Exhibit JB15 – excel spreadsheet of the breakdown of the Claimant's expenses since 2008
    - Exhibit JB16 – bank statements/summaries for the account of BTS (Europe) Ltd with Lloyds Bank Plc showing all payments between BTS and Site Rescue
    - Exhibit JB17 – excel spreadsheet with breakdown of Claimant's events work for Site Rescue (cross-charged by BTS to Site Rescue)

51. In the witness box, the Claimant gave her evidence in a measured and calm way, without exaggeration. She had a detailed knowledge of the way in which the various businesses operated, and clearly struck me (and I think this was common ground between the parties and the witnesses) as a very capable, experienced and hard-working businesswoman. It was apparent from the statements of case and witness statements that the relationship between the Claimant and Defendant came to an abrupt and acrimonious end, and I could certainly sense from her demeanour in the witness box and her attitude towards the Defendant that she was still bitter about what happened, particularly in view of her commitment to the business and the support she provided, but I am satisfied that this did not detract from the quality and credibility of her evidence. Overall, I regard the Claimant as an honest witness and I readily accept much of what she had to say, particularly her detailed and helpful evidence about the way in which the business worked.

52. The Defendant provided a little less detail in his witness statement about the way in which the business operated and the Claimant's role in it, but did provide quite a bit of commentary which reflected his case that the business of Site Rescue was operated by him as a sole trader, relying also on an extensive exhibit TB1, including:

    - TB1, pp 2-6 – a collection of BTS invoices for cross-charging to Site Rescue
    - TB1, pp 7-12 – HSBC bank account statements for Mr A J Barker t/a Site Rescue

- TB1, pp 13-28 – a business plan for SR Safety Services Ltd
- TB1, pp 29-106 – Site Rescue staff handbook
- TB1, p 107 – General information and bank details sheet for Site Rescue
- TB1, pp 108-110 - business cards for the Claimant and Defendant
- TB1, pp 111-164 – Defendant's tax returns
- TB1, p 165 – Sample invoice Site Rescue to [customer]

53. As with the Claimant, the Defendant gave his evidence in a measured and calm way, without exaggeration. I do not think he had the same, detailed, grasp of the day to day working of the business and presented very much more as a 'front man' for the business, rather than a back room technician, but apart from challenging the Claimant about the work she did and the charges, he says, she made for her time on Site Rescue business, he did not really engage on much of the detail in the claim, preferring instead to address matters on a fairly high and general level and emphasising how he perceived he ran this business as a sole trader, by reference to some of the contemporaneous documentation. Although Mr Weiss, for the Claimant, urged me not to accept the Defendant's evidence, submitting that the Defendant was not a credible witness because he conceded in cross examination that his Defence at paragraphs 9(a) and 9(b) was wrong and misleading, I did not consider that this materially detracted from the substance of his evidence. Although I accept Mr Weiss's point that at times the Defendant was hesitant about details and (perhaps not surprisingly) occasionally asked to be taken to further documentation in support of a proposition, overall, as with the Claimant, I regard him as an honest witness and I also accept much of what he had to say.

54. Taken together, my overall assessment of the evidence given by the Claimant and Defendant is that they are probably coming to this from different angles, albeit both with reasonably clear and compelling evidence – the Claimant presenting a lot of the detail about what she did as tending to show that it was more likely than not that they were carrying on in partnership, with the Defendant presenting much more about the nature of their working relationship and what they agreed (or did not agree) as tending to show they carried on separate businesses.

55. I acknowledge that according to *Lindley & Banks, para 7-32*, evidence from witnesses about whether they perceived the parties to be carrying on in partnership is admissible as 'usual' evidence of partnership, and the witness evidence relied on by both sides largely fell into this category, although some of the witnesses did provide some additional helpful information. Each of the witnesses gave fairly straightforward and unremarkable evidence and I think they were all trying to assist the court without exaggeration, albeit to a greater or lesser extent, they fell into separate camps. Although interesting, and certainly reflective of who each witness dealt with and who they thought was running the business, I was not greatly assisted by any of them, apart from one or two details about particular events. There is no real issue that the Claimant was closely involved in the day to day running of Site Rescue and it did not really assist for me to be told how much work they thought she did, nor for any of the witnesses to comment on how the Claimant and Defendant presented as 'partners', particularly since they were in a close personal relationship at the time. What none of the witnesses could tell me was anything about the underlying business arrangements between them and to the extent that they were willing to offer a view, I think this was just speculation.

56. So, in my judgment, this case is likely to turn on my findings of fact based principally on the evidence given by the Claimant and Defendant, together with the contemporaneous documentation, but having regard also to the principles of law I have referred to about what gives rise to a partnership at law.

57. I should add that quite a bit of the background, as well as other evidence, is either agreed or not particularly disputed. The real issue is about how I interpret it and whether, as I have said, it is sufficient to give rise to a partnership at law. Where there is a material dispute, I will weigh the evidence and make appropriate findings:

FINDINGS OF FACT

58. The Defendant originally worked in various roles in the fire service and set up the Site Rescue business in 1999 offering fire safety services at events and the hire of fire safety equipment to various commercial clients. He traded as 'A J Barker t/a Site Rescue' and initially operated from his home in Derby. His wife, Gill, did the bookkeeping and invoicing for which she was paid £325.00 per month, and he banked with HSBC with a current account name 'Mr A J Barker t/a Site Rescue'. The accounts were done by a local firm, MPS Accountancy Services Ltd in Derby. As the business grew, he moved it out of his house and rented an office and parking space at Friar Gate in Derby, but my impression is that certainly in the early years, the business was occasional and part-time and the Defendant had another job.

59. By 2001, the Defendant was working in an office building in Wakefield which is where he met the Claimant. She lived in Leeds and had previously been a buyer for Thistle Hotels for over 10 years before joining BTS as a sales and marketing manager in 2001, working in the next office to the Defendant. BTS, as I have said, provided bedroom and bathroom accessories to the hotel industry. The Claimant said that it had initially been run since 1998 as a partnership business between Shaun Kavanagh and his wife Patricia before being incorporated as BTS (Europe) Ltd on 8th January 2007 (with Shaun being the managing director with a 50% shareholding, his wife Patricia being a director with a 30% shareholding, and the Claimant a director with a 20% shareholding). It appears to have had a fairly small staff, dealing with administration, invoicing and accounts etc.

60. The Defendant was made redundant in around 2002 and it was around this time, possibly shortly after, that he started having an affair with the Claimant. He was still living at home with his wife in Derby and running the Site Rescue business doing various events around the country, mainly Antiques Fairs for the Daily Mail Group. The Claimant started going along with the Defendant so they could spend time together and says that by 2004 she was attending maybe half a dozen events with him.

61. In 2006 an opportunity came up for the Defendant to invest in a fire simulator from France to provide training services to events and companies and after discussing it with the Claimant they agreed to jointly purchase the simulator and pay the operating licence fees, and to run the business through a separate company, SR Safety Services Ltd, which was incorporated on 18th July 2006 on the advice of the accountants, MPS. They were each appointed directors, and each alloted one share. It is common ground that they funded the fire simulator and licences jointly, with loans and savings. The need for funding prompted a business plan, a copy of which was in the bundle and is dated October 2006 (although the copy may have been updated after that date because it refers to BTS

(Europe) Ltd which was only incorporated on 8th January 2007). I have been referred to some of the contents:

- Para 1.0 Executive Summary – SR Safety Services Ltd will compliment business already established, one of which is owned by Anthony Barker and the other managed by Josephine Burnett. The financing, in addition to the capital contributions from the Directors will allow SR Safety Services Ltd to successfully launch and maintain operations throughout year one. Further expansion thereafter will be funded from profits generated on an on-going basis. The majority of the profits for the first 3-5 years will be re-invested into this venture.

- Para 2.1 Company Ownership – SR Safety Services is a Limited Company jointly founded and equally owned and operated by Mr Anthony J Barker and Miss Josephine E Burnett. Both directors bring a number of attributes:

  Tony Barker – As proprietor of Site Rescue …
  Josie Burnett – As Sales and Marketing Director of BTS (Europe) Ltd…

  Jointly, with a good rapport already in this place this partnership should prove effective (foot in the door scenario) when introducing new products and clients.

- Para 6.1 Personnel Plan – The administration and book-keeping staff will consist of 3 part-time employees (already employed by BTS) offering 9am to 5pm cover, Monday to Friday. A rate of £7.50 per hour will be cross-charged by BTS to SR Safety Services Ltd in relation to any works carried out. It is anticipated the monthly cross charge will amount to approx. £100.00 per month.

  When Anthony Barker is unavailable to train clients, 2 members of the existing Site Rescue team will act as Instructors, backed up by a number of alternative Site Rescue employees if necessary.

62. From this, it can be seen that they took professional advice and opted to run the SR Safety Services business through a company in which they jointly invested and held equal shares, but reflecting that each of them had other business interests (the Defendant's being Site Rescue) with administration and book-keeping support being provided by BTS (which was by then operating from premises at Jubilee House, Morley, Leeds) which would cross-charge its services to SR Safety Services Ltd. Neither the Claimant nor the Defendant said much about the discussions they had with MPS which led to the incorporation of the company although the Claimant was at pains to point out that they set the business up this way in order to ensure that each had equal interests. I would have expected any discussions to have taken into account the fact that they were each involved with their own separate businesses at the time.

63. I have not been provided with much evidence about the operation of the SR Safety Services business, certainly as a separate, simulator training business, but the Claimant's evidence, which I accept is that the simulator business never really took off. They delivered some training with it and leased it out, as well as training some of the Site Rescue staff on it, but the impression I get is that it was largely subsumed into the Site Rescue business, and it is this that started to take off.

64. The Defendant and his wife eventually separated in 2007 and subsequently divorced. He still had premises in Derby and was travelling up to Leeds on a regular basis to stay with the Claimant, but without his wife helping him in the business he was struggling to deal with the administration and bookkeeping for Site Rescue. The Claimant and Defendant had already set up the SR Safety Services business on the basis that the administration and bookkeeping would be done by BTS and cross-charged and it is common ground that in 2008 the Claimant stepped in to bring the back office function of Site Rescue to BTS in Leeds, with the vehicles initially remaining in Derby.

65. There is obviously an important issue about the precise basis on which this was done. As I have said, the way in which the Claimant initially pleaded her claim in paragraphs 12 and 13 of the Particulars of Clim gave the impression that they actually reached some sort of agreement in 2008 that they were going to carry on the business of Site Rescue in partnership, but as the claim is now put in reliance upon an implied agreement, I think it is implicitly acknowledged that there was no actual agreement about partnership.

66. It is common ground that there was nothing in writing. There was no partnership agreement, and nothing in the documents which evidenced that they were running the business together in partnership. At paragraph 43 of her witness statement, the Claimant said "We never formalised anything about Site Rescue, such as putting together a partnership agreement, because I never thought I would have to and our relationship wasn't like that. At the time, we were a happy couple, working together in partnership to build ourselves a better future". I pause there to note that they did of course take the opportunity to review their business affairs in respect of SR Safety Services Limited.

67. Having heard the evidence, it is clear that there was never even a specific discussion about going into business in partnership and in cross-examination the Claimant accepted this. She agreed there was no official agreement as such and they never talked about it being 50/50. She said they never had a conversation along these lines. She just assumed it was "ours" although she could not pinpoint when it became "ours", or what her share was, or when she achieved 50/50 status as a partner, although she did say that as her responsibilities grew, she thought she owned more than half, which seems to reflect an interest directly proportionate to the amount of work she was doing, but not by reference to any agreement they had. The Defendant consistently said they never had a conversation about partnership.

68. The curious thing is of course that the Claimant has accepted the Defendant's case that they did expressly agree for the administration and bookkeeping of Site Rescue to be done by BTS and cross-charged, and it is common ground that the cross-charges also included an allowance for the Claimant's time attending events (cross-charged as 'JB Event Work') which the Defendant accepted, but I think it is fairly clear that this was all they appear to have agreed at the time.

69. Indeed, my sense of this is that having just set up SR Safety Services Ltd on agreed terms for administrative work to be done by BTS and cross-charged, and with much of what SR Safety Services was doing merging into the Site Rescue business, I can readily see why they brought the back office function of Site Rescue into BTS on the same basis because it made obvious, practical, sense. The clear impression I get from both of their evidence is that that the administrative functions just merged together but, as I have said,

there was never any agreement about changing the business ownership of Site Rescue. Indeed, had there been such an agreement, even in principle, I would have expected them at that stage to have taken advice from Site Rescue's accountants, MPS, about the best way to structure the business, either with a formal partnership agreement or possibly by incorporating a company, and I would certainly have expected the Claimant to have followed it through. In my judgment, it is significant that this did not happen.

70. The fact that there was at least an apparent agreement for the Claimant to charge separately for her time attending events may also be significant because it reflected some personal return for her time. I pressed the Defendant about this to explain what, if anything else, the Claimant was going to get out of this, but he said that was it. It fitted with his budget at the time. He said they did not have a discussion about what else she was going to get.

71. Furthermore, my overall sense of the Claimant's case which I think provides a consistent explanation for the arrangements they entered into is that it probably suited both parties, at the time, to carry on running their businesses in the way they did and that at best, the Claimant simply had aspirations for they way in which their businesses may turn out in the future. I regard it as inherently unrealistic that in consideration of the agreement they actually reached, namely, that the administrative work of Site Rescue would be done by BTS and cross-charged and that the Claimant would cross-charge for her time attending events, that this would be sufficient for the Claimant to think that the business was "ours". I can certainly see why, some years down the line, with her putting in a lot of time and energy into the business without (on her case) any additional personal recompense for her management time, she might certainly have thought that she 'deserved' an interest in the business, but when asked about their hopes and aspirations for the future, she said that it was only in the later years she thought they would reap the benefits of the business saying that she thought 2019 onwards would be "our years" where the business would stand on its own two feet, and they talked about whether to go limited as well as whether to get married. My clear impression is that, perhaps not surprisingly, her hopes and aspirations for the future, and what she would eventually reap from the success of their businesses was intertwined with their personal relationship, but this is very different from saying that it was implicitly agreed she would have an interest in the business from the outset.

72. I think this is also consistent with much of the contemporaneous evidence.

73. The banking, accounts and taxation of Site Rescue continued in the name of Anthony Barker as a sole trader, with the Defendant's tax returns specifically crossing the box to indicate that he was not in a partnership (and although the Claimant's tax returns and accounts were not put in evidence, it was not suggested that she claimed a partnership interest in Site Rescue for tax purposes either). It is significant that even on her own evidence, the Claimant was the principle point of contact between Site Rescue and their accountants. She provided the invoices and other financial information and her staff dealt with the VAT returns, so they would have been well aware in my judgment that the accounts were being prepared, and the income tax and VAT being charged on the basis that the Defendant was a sole trader. There is a Site Rescue headed general information and bank details sheet which identified Tony Barker as 'Proprietor' and Josie Burnett as 'General Manager', signed by them both, and there are Site Rescue business cards in Josie Burnett's name identifying her as 'General Manager', both before and after the

move to new premises at The Training Centre, New Princess Street, Leeds (on 1st June 2015). In fact, there is no contemporaneous documentation or indeed any other evidence, which indicates that Site Rescue was a partnership between the Claimant and Defendant, or which identifies either of them as business partners.

74. I readily accept that this does not, as a matter of law, necessarily preclude the existence of a partnership, but it is, nonetheless a significant and curious omission by a financially astute businesswoman, and may to an extent be explained by the fact that by 2007-2008 when the Claimant was able to bring the administrative functions of both SR Safety Services Ltd and Site Rescue into BTS, she was effectively taking over day to day control of BTS (Europe) Ltd which enabled her to control the BTS staff, and at a board meeting of that company on 10th June 2009 Shaun and Patricia Kavanagh relinquished their shareholding back to the company and resigned as directors, leaving the Claimant as the sole director and shareholder of the company. I suspect that with the financial commitment of the BTS business, she may have been reluctant to make any contribution to the capital of Site Rescue and take on the potential liabilities of that business, and the ability to cross-charge for BTS staff time would at least have made some financial sense.

75. The real thrust of the Claimant's case, which accounted for the bulk of her evidence was to concentrate instead on the nature and extent of her role in the management of the Site Rescue business as it developed over time, which reflects Mr Weiss's approach that the implication of an agreement in 2008 is illuminated by the parties' subsequent conduct. I need to take some care with this. Although, as I have said, an agreement may be implied from conduct, it must be relevant and persuasive and reflect the arrangements made in 2008. As Bingham LJ said in the ***Blackpool & Fylde Aero Club*** case, the court must be able to conclude with confidence both that the parties intended to create contractual relations and that the agreement was to the effect contended for. The later the events relied upon, the less cogent they are going to be.

76. I will deal with the subsequent chronology of events, starting with the documented evidence first.

77. The business appears to have developed fairly steadily to 2014. I have reviewed the excel spreadsheets for cross-charged work:

    (1) Between 2009 and 2013 BTS charged for:

        (a) Staff time. In 2009 it is marked down as 'Caz Time' (referring to Carolyn, who worked for BTS doing the VAT returns and entering invoices for Site Rescue per para 38 of the Claimant's witness statement), and from 2010 simply as 'Time' – this is time charged at an hourly rate;

        (b) The Claimant's time attending events as 'JB Event Work' – these are one-off charges and it is not clear how the final figures were arrived at; and

        (c) Miscellaneous out of pocket expenses.

    (2) The cross-charges were each invoiced separately from BTS to Site Rescue with the invoices being produced to the accountants for tax purposes. Some of the later invoices are copied in the bundle.

(3) In 2009, staff time was between 2-5 hours per month at £8.50 per hour, with one charge for JB Event work. The total for the year came to £778.12 of which £425.00 reflected staff time, £202.50 for one JB Event Work in December and the rest on out of pocket expenses. This suggests an extremely modest level of administrative work being done by BTS immediately after the arrangements entered into in 2008.

(4) In 2010, staff time was typically around 4 hours per month at between £8.50 and £9.0[1] per hour, but with quite a lot of JB Event Work being charged. The total for the year came to £3,151.65 of which £403.24 reflected staff time; £2,232.50 for JB Event Work; and the rest on out of pocket expenses.

(5) The sheets are incomplete for 2011, but 2012 contains a similar breakdown: The total charge of £3,753.10 includes £981.00 for staff time fluctuating between 5-20 hours a month at £9.00 per hour; £2,447.00 for JB Event Work and the rest on out of pocket expenses.

(6) Similarly, with 2013. The total re-charge of £4,629.25 includes £945.00 for staff time fluctuating between 5-10 hours a month at £9.00 per hour; £2,262.50 for JB Event Work and the rest on out of pocket expenses.

78. It is common ground that at some point during this period, the Claimant had access to Site Rescue's bank account (she was added as a signatory to the current account with HSBC at some point) and the Defendant was fairly relaxed about this, letting her get on with all the administration and leaving him to get on with client business. She produced the invoices which, to a greater or lesser extent he approved, and they were paid.

79. The Claimant also (principally through BTS) provided financial assistance with cash-flow by making occasional cash loans to Site Rescue to pay things like VAT and other outgoings. The Defendant does not dispute this, and they are reflected in the bank statements copied in the bundle and listed in the summary sheets. Again, it is common ground that the Defendant largely left it to the Claimant to make the payments into Site Rescue's HSBC account, and then when funds were available, to make repayments back out to BTS's Lloyds Bank account. There is no suggestion that BTS is due anything for unpaid loans or interest.

80. It is common ground that 2014 represented a significant upturn in Site Rescue's business as it successfully tendered to provide emergency services at a stage of the Tour de France being held in Yorkshire. The Claimant described this in paragraph 51 of her witness statement as a real 'game changer' and I can see from the excel spreadsheets for 2014 that the invoices in that period totalled £8,214.59 with fairly typical staff costs being charged for most of the year at between 10-20 hours per month at £9.00 per hour, plus some JB Event Work, but with a significant increase in staff costs charged in June (71 hours) and July (74 hours).

81. The following years were charged as follows:

(1) 2015: Total charges £5,386.02 comprising £1,845.00 for staff time (between 10-30 hrs per month at £9.00 per hr); £915.00 for JB Event Work; and the rest out of pocket expenses.

(2) 2016: Total charges not given but including £1,980.00 for staff time (between 10-20 hrs per month at £9.00 per hr); and £2,020.50 for JB Event Work.

(3) 2017: Total charges not given but including £2,340.00 for staff time (20 hrs per month with one month at 40 hrs at £9.00 per hr); and £1,257.00 for JB Event Work.

(4) 2018: Total charges not given but including £2,250.00 for staff time (between 0-50 hrs per month at £9.00 per hr); and £1,260.00 for JB Event Work.

(5) 2019: The charges only cover the period Jan-June 2019 but include a total of £720.00 for staff time and £0 for JB Event Work.

82. I will go on now to review the evidence more generally, including the witness evidence about what else the Claimant was doing in the business, some of which is documented, for example, the PARiM records (which, as I have noted, is workforce software used to engage temporary staff, and generates user entries).

83. I need to take some care with this since it significantly overlaps with the second preliminary issue on the Alternative Claim and, for the reasons I am about to give when dealing with that issue, below, I am cautious about making findings of fact about the extent of the Claimant's work which was not cross-charged, not least because there has been no real breakdown of the staff time cross-charged (it appears from the invoices and spreadsheets to have been charged broadly in blocks of 5 hours and which, I suspect, may have been rounded up possibly to reflect some management time or moderated to reflect the Claimant's overall 'feel' for the value of work being done in each month) or precisely what the 'JB Event Work' actually included. The Defendant's case of course is that he simply left it to the Claimant to cross-charge Site Rescue for all the work being done which he thought included her time, but he did not actually know.

84. The general impression I got from the witness evidence is that throughout her involvement in Site Rescue business, the Claimant became increasingly busy, with her work extending beyond simply supervision of BTS staff dealing with the day to day bookkeeping and invoicing etc, which I think is what was envisaged in 2008, to effectively managing the business and taking on a whole range of other tasks. She listed various types of work she did in paragraph 14 of the Particulars of Claim as follows: preparing the accounts; preparing quotations and tenders; preparing and submitting invoices; drafting medical management plans for Site Rescue's customers; advertising for workers; interviewing workers; furnishing workers with suitable uniforms and work equipment; liaising with customers; liaising with suppliers; drafting necessary business paperwork; providing first aid and fire management services at events; providing chaperone services at events; providing regular interest-free loans to the business during periods of inadequate cash-flow; and (latterly) facilitating the use of premises at The Training Centre, New Princess Street, Leeds by the partnership (it is common ground that the business moved to these premises on 1st June 2015, and that the premises were taken on an Underlease by SR Safety Services Limited for a contractual term of 10 years).

85. Although the Claimant (and her witnesses) gave quite a bit of evidence about this, it was not particularly disputed by the Defendant, and he was largely unable to gainsay what the Claimant said she had done. The Claimant was certainly being held out as the

'General Manager' of the business both before and after the move to The Training Centre in 2015 and in my judgment, this is probably an apt description of the role she had, so I am largely with the Claimant on this aspect. To an extent, this is also corroborated by the number of 'General Manager' entries in the PARiM software. I only express a little caution because (and again this is relevant to the Alternative Claim) it is difficult to verify the overall time actually spent and not charged for, and the precise nature of the work done, from the evidence I have been provided with. Certainly, the invoices and spreadsheets for cross-charges do not tend to reflect a significant uplift in the administration work involved. That said, the Claimant's case which, again, was not seriously challenged by the Defendant, was that the turnover of the business was around £90,000 per annum in 2007; by 2014 it had increased to around £250,000 per annum; and by 2018 it had increased to around £330,000 per annum and there is no doubt in my judgment that that reflected their joint efforts in bringing in and managing new business.

86. As to the amount of uncharged time the Claimant committed to this business, again, I am cautious about this on the evidence since it overlaps with the Alternative Claim, and for present purposes, I do not make any findings of fact, save simply to note that so far as it is relevant to the Partnership Claim, the Defendant did not seriously challenge the Claimant's assertion that in the early years, from 2008 onwards, her pleaded case was that she devoted 10-15 hours per week of her time to the business (Particulars of Claim, para 12). In my judgment, it was probably implicit in the agreement she reached with the Defendant for bookkeeping and invoicing to be done by BTS staff and cross-charged to Site Rescue that she was inevitably going to have to devote some time to supervision. They must have anticipated some element of this, but it is significant that they made no express provision for it, or at least elected not to specifically charge for it or identify it in the invoicing at the time. As the business developed, particular from 2014 onwards, it is clear that she ended up devoting increasingly more time to managing the business. Again, I make no findings of fact about this save to note that the Claimant's pleaded case is that since 2013 she devoted on average at least 25 hours per week to the business (Particulars of Claim, para 16).

87. For completeness, I finish off the chronology with the following dates and events:

    (1) As already noted, on 1st June 2015, the business moved with BTS to new premises at The Training Centre. The Underlease was taken in the name of SR Safety Services Limited, with rent being cross-charged. The precise arrangements entered into are a little obscure. There are two invoices in the bundle. Each contain cross-charges for a proportion of rent, rates, premises insurance, water, electricity and gas in the period Aug 2015 to 16th December 2019 – one to BTS (Europe) Ltd for £30,116.75 and the other to Site Rescue for £100,389.18. I was not really told what the underlying arrangements were.

    (2) A company, Site Rescue Limited, was incorporated on 30th October 2015 (by Jones, accountants). The Defendant was appointed the sole director, with an allocated share capital of 1000 shares being allotted to the Claimant. Again, the arrangements about this are not at all clear, and appears to have given rise to some conflict, even then. The Claimant suggests (Witness Statement, para 137) that she was made a 100% shareholder because the Defendant did not want his wife to claim anything, but in evidence the Defendant disputed this. On 29th October 2016 there is a confirmation statement with a PSC notification in which the Defendant was

registered as a person with significant control, asserting that he held 75% or more of the shares. There are subsequent conflicting entries. The fact of incorporation of this company is potentially relevant, but the underlying arrangements are simply not clear. For practical purposes, I note that it did not take up the business of Site Rescue.

(3) In around June 2016, Site Rescue acquired the business of Ise Vale Medical Services Limited, a medical supply company formerly owned by Alan Brooks and his wife, Clare. A confirmation statement made on 24th March 2017 shows that the Defendant became the sole shareholder. It is common ground that the Claimant was certainly aware of the negotiations and attended some of the meetings (this is referred to in Alan Brooks' witness statement and was confirmed by him) but there is little evidence about her intended interest.

88. Where does all this get the Claimant? I remind myself that the issue is whether the court can imply an agreement between the Claimant and Defendant to enter into partnership in the business of Site Rescue in 2008, as evidenced by their conduct. I direct myself in accordance with the requirements I have set out in paragraphs 32-42 above and especially having regard to the way in which the court deals with implied agreements in paragraph 38 above and would reach the following conclusions:

(1) There was no express agreement to enter into partnership. There was nothing in writing and there was no oral agreement (paras 66-67 above).

(2) The parties did reach an express oral agreement for the administration and bookkeeping of Site Rescue to be done by BTS and cross-charged to Site Rescue. This included a cross-charge for the Claimant's attendance at events (para 68 above).

(3) The fact that there was no partnership agreement; merely an agreement for cross-charging is significant and is to an extent explicable (paras 69-70 above) and the likelihood is that at best, the Claimant simply made an assumption, which was not shared with the Defendant, that the business would be "ours", most likely reflecting her hopes and aspirations for the future, but not being reflective of a current partnership agreement (para 71 above).

(4) This is consistent with the contemporaneous evidence (paras 72-74 above).

(5) The nature and extent of the initial arrangements, certainly in the period 2009-2013, suggests a fairly modest level of work being done by BTS, with administrative work being cross-charged and with the Claimant getting a return on her attendance at events (para 77 above). I accept, without making any findings of fact, that the evidence appears to show that from around 2008 the Claimant devoted around 10-15 hours per week of her time to Site Rescue, some of which I expect may have been envisaged by the parties when they agreed to cross-charge. In my judgment, I cannot imply from this conduct an intention to enter into partnership in 2008.

(6) From 2014 onwards, the Claimant was increasingly busy as a 'General Manager', taking on much of the day-to-day administrative control of the business and being responsible for quite a range of day to day work (paras 78-86).

(7) The subsequent events do not really assist either way in providing relevant evidence of conduct (para 87).

(8) There were no 'normal incidents' of partnership – no mutual agency; no contribution to capital; no liability for losses; and in particular no holding out as a partner (per paras 35-36 above).

(9) In particular, it is difficult to avoid the conclusion that the parties deliberately elected not to formalise a joint partnership business, even though, in my judgment, the opportunity plainly presented itself, which largely negates the necessary intention to enter into contractual relations (per paras 37-38 above).

(10) None of the 'rules for determining the existence of a partnership' in section 2 of the Act really apply or assist the Claimant (and it was not contended otherwise) (per para 39 above).

(11) Although the Claimant clearly made a substantial contribution to the running of the business, I cannot be satisfied, on the evidence, that she was ever intended to be a partner, and she cannot rely on any of the 'usual' evidence to assist (per paras 40-42 above).

(12) Standing back, and reviewing the evidence more generally, this is not a remarkable conclusion. They were domestic partners whose business interests coincided. They were sufficiently savvy about the business arrangements they entered into and were able to take advice from their accountants time to time. However those business arrangements developed subsequently, I simply cannot be satisfied that as at 2008, they intended to enter into partnership.

89. For all of those reasons, I answer the first preliminary issue as follows:

> Q. Did the Claimant and Defendant carry on the business together with a view of profit such that a partnership arose pursuant to section 1(1) of the Partnership Act 1890?
>
> A. No

90. It follows that I do not need to determine the parties' respective shares or give any further directions for the taking of an account.

91. I turn therefore to the Alternative Claim.

92. I remind myself that the preliminary issue here is to decide on what basis the reasonable value of the Claimant's services to the Defendant is to be determined and to decide what directions should be given for an account to determine the value of such services.

93. I also remind myself of the way in which the Alternative Claim has proceeded in paras 29-30 above.

94. The claim has proceeded on the admitted basis that there was an agreement for the Claimant to cross-charge to Site Rescue for services provided, including for reasonable remuneration for the work done by the Claimant, so that it is common ground between Counsel that the claim is in contract and that in the absence of an express term which sets out the basis of remuneration, the law will imply a term into the agreement that the remuneration will be reasonable in all the circumstances (paras 44-47 above).

95. Although not expressly directed in the preliminary issue, the Claimant's entitlement to reasonable remuneration on this basis is obviously subject to the court being able to make findings of fact about:

    (1) Whether the Claimant actually provided additional, unremunerated, services, which have not already been accounted for;

    (2) What those services were;

    (3) The duration and extent of the services; and

    (4) What reasonable remuneration should be charged for them.

96. I would add that it is common ground that having regard to limitation, the claim is for six years' worth of unremunerated services prior to the date of issue (on 14th October 2019) i.e. it goes back to 14th October 2013.

97. I heard submissions from Counsel about how I should deal with this. Mr Weiss for the Claimant understandably urged me to adopt a pragmatic approach and get on and make findings of fact about the work done and the time spent, applying a reasonable hourly rate, roughly in accordance with paragraph 30 of the Particulars of Claim which puts the claim based on the last six years' work and adopting an average rate based on average hours at £106,410.00. He said that I have probably got about as much evidence as the parties are able to give on this, and it will be disproportionately expensive to have another hearing.

98. Mr Fennell urged some caution saying that this was not a quantum hearing; the preliminary issue anticipated further directions to deal with quantum; and that in particular, the Claimant has still not properly particularised the work done, the time spent or the rates charged nor had the Defendant been in a position to properly test the Claimant's case. Adopting a broad-brush approach may prejudice the Defendant. He said that I should give further directions to enable this aspect of the claim to be properly heard.

99. I am concerned about this. Rather like Lloyd LJ in *Greville v Venables* (paras [14]-[15]) I am doubtful about the utility of directing preliminary issues on the Partnership Claim which envisaged further directions to deal with the Alternative Claim, when my findings of fact on one may be directly relevant to the other. However, we are where we are, and I acknowledge that a positive finding on the first preliminary issue would have disposed of the need for the second preliminary issue. I am obviously concerned about the costs to both parties of deferring the Alternative Claim to a further hearing, with directions. I note from their Approved Costs Budgets that the Claimant's costs of this preliminary issue are £100,158.00 and the Defendant's costs are £96,141.00 which are substantial sums to get to this stage in the proceedings, with further costs still to be incurred. However, I am

equally concerned to ensure that I deal with the case in a way which is just to both parties, and which enables the court to make more reliable findings of fact about the work done and the rates to be charged for the Claimant's time. At the moment, this evidence has only been addressed on a very general level and principally only in relation to the first preliminary issue. In the absence of agreement between the parties about how to short-circuit this, I am constrained by the terms of the preliminary issues which provided for the court to give further directions.

100. Accordingly, what I am proposing to do is as follows: I am going to determine the first part of the second preliminary issue on the basis that the reasonable value of the Claimant's services to the Defendant is to be determined on the contractual basis, that is, for the court to determine what sum it is reasonable in all the circumstances to imply for the remuneration of the Claimant.

101. In respect of the second part of the second preliminary issue, I will give directions for the court to determine:

    (1) Whether the Claimant actually provided additional, unremunerated, services;

    (2) What those services were;

    (3) The duration and extent of the services; and

    (4) What reasonable remuneration should be charged for them.

102. I am happy to review these directions between Counsel, and also to give consequential directions. It may not be necessary to direct the taking of an account as such, although I readily accept Mr Fennell's suggestion that it may assist for the Claimant to produce a Scott Schedule listing the work done and the suggested rates to be charged in the relevant 6-year period, with the Defendant to respond.

103. Query whether there is any further, specific disclosure required of the Claimant? Subject to that, I expect it will be necessary for the parties to be given an opportunity to file and serve further witness evidence.

104. I also raised with Counsel at the hearing whether it may be appropriate for the parties to obtain (ideally single joint) expert evidence about market rates for the work being done, and again, I am happy to leave this with them for further consideration.

105. So, on this basis, I invite the parties to liaise and submit suggested directions to determine the Alternative Claim. The trial of the Alternative Claim can, if considered appropriate, be reserved to me, and this may be appropriate particularly if I am being asked to reserve any costs orders until the final determination of the Alternative Claim.

106. I will only add one, important caveat. I would urge both parties to adopt a sensible and pragmatic approach. It will be reasonably clear from the evidence I have reviewed, and the Defendant's position in respect of this evidence, that the court is likely to make findings of fact in favour of the Claimant in respect of her unremunerated services. In other words, there is likely to be a sum due from the Defendant to the Claimant. The Defendant should not look to put off the assessment of this claim for as long as possible;

nor should the Claimant look to recover sums which are unrealistic. As I indicated at trial, I would hope that the resolution of these outstanding issues should be capable of compromise by alternative dispute resolution, particularly mediation, for which this claim is ideally suited. I would prefer, if possible, to stay the further directions for a period of time to enable the parties to consider this, subject to the usual direction that the court will expect the parties to explain what steps they have taken to consider ADR, and whether there has been an unreasonable refusal to engage in ADR, when the court comes to consider the question of costs.

NIGEL CLAYTON
RECORDER