

NEUTRAL CITATION NUMBER: [2024] EWHC 2729 (Ch)

Claim No: BL-2020-BHM-000102

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
BUSINESS LIST (ChD)

Priory Courts
33 Bull Street
Birmingham, B4 6DS

Date: 24 October 2024

HIS HONOUR JUDGE RICHARD WILLIAMS
(Sitting as a Judge of the High Court)

Between:

- (1) MR DAVID JAMES DIGWOOD
(2) MRS CHRISTINE MARY DIGWOOD
(3) MR RICHARD JAMES DIGWOOD

Claimants

- and -

MR ANDREW JOHN DIGWOOD

Defendant

David Mitchell (instructed by Seymour Legal) for the **Claimants**
Catherine Taskis KC (instructed by Thrings LLP) for the **Defendant**

Hearing dates: 26 July and 24 October 2024

JUDGMENT

Introduction and background

1. These long running proceedings, which commenced on 29 October 2020, concern the winding up of the Digwood family farming partnership (“*the Partnership*”), which was dissolved on 5 May 2021.
2. Mr Richard James Digwood (“*C3*”) and Mr Andrew John Digwood (“*D*”) are the children of Mr David James Digwood (“*CI*”) and Mrs Christine Mary Digwood (“*C2*”).
3. The Partnership agreement provided that the profits and losses of the Partnership, including profits and losses of a capital nature, be apportioned 60% to the claimants and 40% to D.
4. It was directed that for the purpose of effecting the winding up of the Partnership, two aspects of the dispute were to proceed in parallel:
 - a. Firstly, a determination of the appropriate method of winding up –
 - i. The claimants argued that they should be given the opportunity to purchase D’s share in the Partnership; and
 - ii. D argued that the assets of the Partnership should be sold on the open market.
 - b. Secondly, an inquiry into the existing trading accounts of the Partnership and the taking of a final partnership account, up to the dissolution date.
5. The Partnership assets comprised the following parcels of land (agreed expert valuations by reference to current usage):
 - a. Land at Morville (£1.105 million);
 - b. Sewage Field (£57,000);
 - c. Land at Aston (£74,000);
 - d. Willow Paddocks (£242,000); and
 - e. Telegraph Lane (£325,000).
6. There was a significant difference of opinions between the separately instructed experts as to the uplift to be applied to reflect the prospect for mineral development at Telegraph Lane. The claimants’ expert said £228,225, whereas D’s expert said £700,000.
7. I gave judgment on the substantive disputes on 10 November 2022, and the consequential order provided inter alia for:
 - a. The sale of Telegraph Lane on the open market to raise funds to give the claimants the opportunity to purchase D’s share of the Partnership. Such a sale rendered academic the difference of opinions of the experts over the

correct uplift to be applied, since that land would be worth what somebody was willing to pay for it;

- b. The Partnership accountants be jointly instructed to prepare –
 - i. Dissolution Accounts; and
 - ii. An estimate as to the profits made since the dissolution that may be attributable to the use of D's share of the partnership assets ("***Profit Estimate***").
 - c. Pending the claimants purchasing D's share of the Partnership –
 - i. The claimants to deal with all the assets of the Partnership in the proper and ordinary course of the Partnership's business;
 - ii. The claimants to pay the entire proceeds of sale of the assets of the Partnership into the Partnership bank account, from which D take no steps to remove any funds; and
 - iii. The claimants to pay and discharge all Partnership debts existing at the date of dissolution and keep D indemnified.
8. The prospective purchaser of Telegraph Lane encountered difficulties in raising the necessary funds, and so the claimants applied to vary my order to enable other parcels of land to be sold instead. On 12 May 2023, I made a further order that the Land at Morville be sold on the open market.
9. The sale of the Land at Morville completed on 24 October 2023 at a purchase price of £1.855 million, which after discharging the charges secured against the Partnership land, generated net proceeds of £1,280,643. So far as Telegraph Lane, the parties have agreed that:
- a. The sale be deferred pending further professional advice as to when to sell with the benefit of the most favourable market conditions and in the light of the progress of the planning process to maximise its sale value; and
 - b. To avoid any further delay in resolving these proceedings, Telegraph Lane be removed as an asset of the Partnership to be held jointly by the parties on trust with their beneficial shares corresponding to their Partnership shares.
10. The Dissolution Accounts were finalised and agreed between the parties and which showed a total value for the Partnership as at the dissolution date of 5 May 2021, but excluding Telegraph Lane, of £2,925,742.
11. On 20 December 2023, the claimants exercised the option to purchase D's interest in the Partnership valued at £856,677. Taking into account the sums already received, D has now been paid the balancing payment of £680,030.51.
12. On 16 April 2024, C1 sadly died after a long illness. It is my sincere regret that these proceedings were not concluded during his lifetime. I make an order under Civil Procedure 19.12(1) that C2 be appointed to represent the estate of her late husband.

13. The further hearing before me, on 25 July 2024, dealt with the treatment of the post-dissolution profits. This is my judgment on the remaining points of disagreement.
14. The next hearing is listed before me on 18 December 2024 to deal with the issue of costs. The parties have incurred very substantial costs in the course of this litigation, and I very much hope that the next hearing will be the last hearing. If, in the meantime, any further issues arise that require judicial determination, I propose to deal with those, if possible, on paper without the cost of a further hearing and by way of the parties' filing brief written submissions via email.

Depreciation

Profit Estimate

15. In preparing the Profit Estimate, the Partnership accountant prepared draft Partnership accounts for the following periods:
 - a. 6 May 2021 to 31 March 2022;
 - b. 1 April 2022 to 31 March 2023; and
 - c. 1 April to 20 December 2023.
16. The Partnership accountant stated in the Profit Estimate that:

“The draft Accounts workings for the periods ended 20 December 2023 include depreciation on plant, machinery, equipment, tractors and vehicles at a rate of 25% on a reducing balance basis, which is the rate and basis previously used within the partnership Accounts. Depreciation has been charged from the asset purchase date and is charged up to the date of disposal of the asset. The profit or loss on disposal of assets sold during the periods is shown within the profit and loss account.

The depreciable assets of the partnership, which were previously stated on the amortised cost model, were re-stated to market value as at 5 May 2021 in line with the instructions per the court order. The depreciation included within the profit and loss account for the periods ended 20 December 2023 is based on the opening market value of the assets.

[The defendant's] capital account balance as at 5 May 2021, previously provided to you under separate cover, includes the uplift to market value of Partnership assets at that date.

Depreciation is a non-cash accounting entry, designed to spread the cost of an asset over its useful economic life, through the profit and loss account of the business. Under normal circumstances, when calculating an existing Partner's share of accounting profits and losses, depreciation would be taken into account. It will be up to the courts to decide whether depreciation should be taken into account for the purposes of computing [the defendant's] share of the Partnership profits for the period.”

17. The issue that I must determine is whether depreciation of £286,272 should be included for the purpose of computing Ds share of the Partnership profits for the

period from the date of dissolution (5 May 2021) to the date of completion of the purchase of D's Partnership interest (20 December 2023).

Applicable statutory framework

18. S.38 of the Partnership Act 1890 ("*the 1890 Act*") provides:

“Continuing authority of partners for purposes of winding up.

After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution[F1, and in relation to any prosecution of the partnership by virtue of section 1 of the Partnerships (Prosecution) (Scotland) Act 2013], but not otherwise.

Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.”

19. S.42 of the 1890 Act provides:

“Right of out-going partner in certain cases to share profits made after dissolution.

(1)Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets.”

The arguments

20. It is argued on behalf of the claimants that:

- a. The claimants purchased the defendant's share of the plant and machinery valued at the dissolution date.
- b. Those assets were used by the claimants to generate profits post-dissolution.
- c. It follows that 2 ½ years later those assets will be depreciated.
- d. Given the disproportionate costs involved, the parties did not have those assets revalued at the date they were in fact purchased by the claimants. It would be unfair to ignore the fact that the claimants bought out the defendant in 2023 at 2021 prices, particularly in circumstances where the defendant has benefited from the uplift generated in the interim on the sale of the Land at Morville.

- e. It is implicit from the defendant's conduct that there was an agreement that the Partnership be treated as continuing in the interim in circumstances more akin to the application of s.38. That conduct included:
 - i. The defendant working on the initial potato harvest post-dissolution.
 - ii. The defendant exerting control in how the Partnership business was conducted post-dissolution.
 - iii. Sums demanded by and regularly paid to the defendant as quasi 'drawings' and from the sale of Partnership assets.
- f. The accounting practice in such circumstances, and as noted by the Partnership Accountant, is to depreciate the relevant assets.

21. It is argued on behalf of D that:

- a. The treatment of the post-dissolution profits is governed by s.42 of the 1890 Act, which provides that D is entitled to a share of the profits attributable to the use of his share of the Partnership's assets or, at his option, to interest at 5% per annum on the amount of such share.
- b. S.42 is concerned with *revenue*: that is, profits accruing in the ordinary course of carrying on the Partnership business pending realisation – ***Barclays Bank Trust Co Ltd v Bluff*** [1982] Ch 172. The capital values of the partnership assets are, for the purpose, irrelevant. Those capital values were assessed for the purpose of dissolution at the dissolution date and taken into account in the sum payable by the claimants to acquire D's share of the assets. The assets, whether depreciating or otherwise, are treated as the claimants' assets, and D is entitled to be paid out their value as at 5 May 2021. D is further entitled to be compensated for the use of those assets by the claimants by receiving a proportion of the profits achieved by their use.
- c. D has proceeded throughout on the basis that s.42 applies, and the orders made reflect D's position.
- d. It is too late for the claimants to argue that s.42 does not apply, and if they are permitted now to do so this would render futile the entire accounting process undertaken since January 2024.

Analysis and conclusion

22. In ***Hopper v Hopper*** [2008] EWCA Civ, Etherton LJ said:

“[48] Section 42 governs what happens in relation to post-dissolution profits if (1) the business of the former partnership is continued by one or more of the former partners, not for the purposes of winding up the former partnership, but for the personal benefit of those continuing to run the business, and (2) those persons do not include all the former partners and the personal representatives of the deceased partner, but (3) there are retained within the continuing business all or part of the shares of the assets of the former partnership to which those non-participants in the continuing business were entitled (in their personal capacity or as personal

representatives) on dissolution of the former partnership. In summary, this is a familiar situation, well covered by the cases and equitable principles which applied both before and after enactment of the 1890 Act, where one person's property is employed in the business of another, who may or may not be in breach of trust in retaining that property, and the question arises what rights the owner of that property has in respect of profits of the business: see *Lindley on Partnership (15th ed)* pp 719 – 723.

[49] Against that background, the meaning and effect of s 42 are clear. All such non-participant former partners are “outgoing partners”; and they and the estate of the deceased partner are entitled, in the absence of agreement to the contrary, to such share of the profits made since the dissolution as the court may find to be attributable to the use of their shares of the partnership assets or, at their option, to five per cent per annum on the amount of their shares. If they have reached agreement as to some other entitlement (an “agreement to the contrary” within s 42(1)), then they will be entitled to what they have agreed. Such an agreement may, for example, be contained in the partnership contract if it contains provisions anticipating that that one or more partners may continue to trade after dissolution. Alternatively, an agreement may be reached expressly for the purpose after dissolution.

23. Therefore, s.42 applies by default unless and to the extent that there was an agreement to the contrary. It was D’s position from the outset that the Partnership be wound-up immediately through the sale of the Partnership assets on the open market. Contrary to D’s expressed wishes, the court imposed upon him an outcome whereby the claimants were given the opportunity to continue the business so that they could in due course buy out D’s interest in the Partnership. In such circumstances, I do not consider that it is properly arguable that there was an agreement post-dissolution to disapply s.42.

24. In *Barclays Bank Trust Co. Ltd v Bluff*, H.E. Francis Q.C. (sitting as a deputy High Court judge) held:

“.....In my judgment the word 'profits' in s 42(1) of the 1890 Act means profits which have accrued in the ordinary course of carrying on the partnership business pending realisation. The profits in this case arise from the carrying on of a farming business. This involves the use of farm land and buildings for rearing livestock and growing agricultural produce. The earnings of the business derive from the disposal in the ordinary course of trade of the livestock and produce. The profits consist of the excess of these earnings over the expenditure incurred in carrying on the business. These profits are brought about by the use of the farm land and buildings. These, as it seems to me, are the profits referred to in s 42(1). An increase in the market value of Grange Farm between the deceased's death and the sale of the farm, whether resulting from a general increase in the market price of agricultural property or from the possibility of obtaining planning permission for the development of part of the land does not in my view fall within the ambit of the word 'profits' as used in s 42(1).....”

25. Similarly, in *Emerson (executrix of the estate of James Emerson (decd)) v Estate of Thomas Matthew Emerson (decd)* [2004] EWCA Civ 170, Chadwick LJ held:

“[12] In my view the judge was plainly correct to take the view that s 42(1) of the Partnership Act 1890 had no application in relation to the

compensation moneys [received post-dissolution for the slaughter of livestock following the outbreak of foot and mouth disease]. It is clear, as this court pointed out in *Popat v Shonchhatra* [1997] 3 All ER 800 at 807, [1997] 1 WLR 1367 at 1374 [which itself referred to the decision in *Barclays Bank Trust Co. Ltd. v Bluff*], that post-dissolution capital profits cannot properly be regarded as ‘profits’ for the purposes of s 42(1).

26. It is therefore well established that s.42 has no application where the profits realised by the continuing partners are of a capital nature. In my judgment, and by corollary, neither can s.42 apply to losses of a capital nature.

27. In conclusion, I find that (i) s.42 is engaged in this case, and (ii) depreciation should not be included for the purpose of computing D’s share of the Partnership profits for the period from the date of dissolution.

Credit to be given for C3’s labours post-dissolution?

28. The claimants argue that it is well settled that continuing partners are entitled to a notional credit for their labours post-dissolution.

29. In his witness statement dated 9 July 2024, C3 describes the role and work he has done on the farm since dissolution as being equivalent to that of a Farm Manager. Exhibited to the witness statement is a survey conducted by the Institute of Farm Management, which states that the average annual salary for UK Farm Managers is £59,695 per annum. The claimants therefore seek a notional credit of £130,000. D has not put in any evidence to challenge C3’s evidence in this regard.

30. However, D does argue that as a point of principle no credit should be given since:

- a. an allowance can only be properly made if –
 - i. the claimants can show that the profits have been earned wholly or partly by means other than the utilisation of the partnership assets – *Manley v Sartori* [1927] 1 Ch 157; or
 - ii. if the profit was attributable to some contribution or effort by them that has not been recompensed, or fully recompensed, out of the revenue profit – *Popat v Shonchhatra*.
- b. The claimants have not brought further assets or capital to the business.
- c. The claimants can and have been fully compensated for the continued operation of the business out of the profits made, just as they were in the period prior to dissolution.

31. In my judgment, the cases relied upon by D are distinguishable from the present case:

- a. In *Manley v Sartori* Romer J said (with my emphasis added)–

“Some things appear to be reasonably clear in this connection. Where, in such a case, the surviving partners, instead of realising the assets and distributing the proceeds amongst the parties in accordance with their rights and interests, choose to carry on the business and make

profits by virtue of the employment of any of the partnership assets, then, subject no doubt to making a proper allowance to the surviving partners for their trouble in so carrying on the business, such profits belong to all the persons interested in the partnership assets by means of which the profits have been earned in accordance with their rights and interests in those assets; that is to say, proportionately to their interests in those assets. That has been laid down in numerous cases and is affirmed by s 42 of the Partnership Act 1890.”

The issue to be determined in that case was not whether or not an allowance ought to be made for the continuing partner’s trouble in carrying on the business but rather an inquiry to ascertain if any part of the post-dissolution profits had been earned otherwise than by the user of the partnership assets including goodwill.

- b. In *Popat v Shonchhatra* Neuberger J (as he then was) held in relation to the post-dissolution (revenue) profits subject to s.42 as follows:

“The proper approach, therefore, is to assess the respective proportionate shares of the plaintiff and the defendant in the business as at 10 January 1990, and then to divide the post-termination profits between the parties pro rata to their proportionate shares, subject to first allowing to the defendant what Romer J called 'a proper allowance ... for [his] trouble in ... carrying on the business'”

The judge then went on to consider in that case the division of capital profits (not subject to s.42) and in particular the capital profits arising upon the sale of freehold premises acquired as a result of an unmatched capital contribution made by the continuing partner (the defendant in that case). It was in that context that the judge held:

“Of course, when assessing the value of the plaintiff’s interest in the proceeds of sale of the freehold premises, the goodwill of the business, and the fixtures and fittings, there must be taken into account the defendant’s contribution of £80,000, being the price he paid to purchase the freehold, together with any other incidental costs. I would also add this. If on the inquiry it is concluded that the profits made during the period between 10 January 1990 and 10 July 1992 are less than the “proper allowance” to be made to the defendant in respect of his work in carrying on the business, then, provided, and only provided, the inquiry concludes that any capital gain was partially contributed to by the defendant’s efforts during that period, I think that the balance of the “proper allowance” may be allowed in the defendant’s favour against the capital gain before apportioning it between the plaintiff and the defendant. It seems to me that if the inquiry concludes that the capital profit made between January 1990 and July 1992 was attributable to the defendant’s efforts, and those efforts have not been recompensed, or at least fully recompensed, out of the revenue profit in the calculation envisaged under section 42(1) of the Act of 1890, as explained in *Manley v Sartori* [1927] 1 Ch. **157**, then the logic of the reasoning in that case, as well as common sense, would require the “proper allowance” in favour of the defendant to be taken into account in his favour in relation to the capital profit. On the other hand, if the master concludes that the

capital profit was not attributable to the defendant's efforts in carrying on and developing the business, then, as it seems to me, it would be inappropriate to allow the defendant such a “proper allowance” against the capital profit, before that capital is distributed between the parties as I have indicated.”

32. *Lindley & Banks On Partnership* 21st Ed. states (at para [25-58]):

“Remuneration for services

Prior to the Partnership Act 1890, Lord Lindley pointed out that:

“... in taking an account of subsequent profits, the partner by whose exertions they have been made is usually allowed compensation for his trouble, unless he is, in the proper sense of the word, a trustee, and guilty of a breach of trust, when no such compensation is allowed.”

Such an allowance is still afforded where an order is made under section 42.”

The post-1890 Act cases referred to (at footnote [160]) include *Sandhu v Gill* [2005] 1 W.L.R. 1979 in which Neuberger LJ (as he then was) said:

“[8] The parties were unable to agree various points relating to the post-dissolution accounts and those points were argued before Master Bowles. The centrally relevant dispute for present purposes was “what share of the post-dissolution profits, if any, . . . Mr Sandhu is entitled to . . .”. In a full and careful written judgment, delivered on 24 September 2004, the Master gave his opinion on the various points. His determination on the relevant dispute was favourable to Mr Sandhu, namely that he was entitled to half of the post-dissolution annual profits, after making a deduction of £22,000 for Mr Gill's services. (Mr Gill's entitlement to that annual sum is not in dispute, and I shall say no more about it).”

33. Therefore, I agree with the claimants that it is well settled that C3 is entitled to a notional credit for his labours post-dissolution, but only to the extent that those labours amounted to an unmatched contribution. It is not disputed that D continued working on the potato side of the business until completion of the harvest in October 2022, which in my view needs to be factored in such that C3 is only entitled to a notional credit in respect of his work on the farm from November 2022 to December 2023 being approximately 12 months. Adopting necessarily a broad brush, but proportionate, approach, I consider that a proper allowance is £60,000 being equivalent to the average annual salary for UK Farm Managers.

Apportionment of post-dissolution profits

34. It is argued on behalf of the claimants that:

- a. D proceeds on the basis that he is entitled to 40% of the profits made since dissolution, which is inconsistent with his assertion that s.42 applies;
- b. D's share of the capital was only 29.2% when adjusted to reflect D's capital account balance;

- c. The court should approach this issue as set out at paragraph 18.18 of *Partnership Law: Blackett-Ord & Haren* (6th ed.), which states:

“**What is his share?** Section 42(1) refers to profits ‘attributable to the use of his share of the partnership assets.’ This is the share at the date of dissolution (or such part of it as remains unpaid), a sum which is difficult to calculate because of the need for a valuation at the dissolution date of all of the assets including goodwill, unless there is agreement to the contrary.....

.....

So *Sandhu v Gill* confirms that the pre-dissolution regime is different from the post-dissolution regime in the field of a partner’s rights to interest and profit-share. On advances, a partner is entitled to interest pre-dissolution under section 24(3). Post-dissolution he is entitled (at his election, under section 42(1)) to either interest [or] a profit share, in either case based on the amount of ‘his share of the partnership assets’ which includes any advances that he has made.”

35. It is argued on behalf of D that:

- a. The claimants’ figure of 29.2% is based upon the proportion that the total amount of D’s pay out from the Partnership (£856,677) bears to the value of the Partnership (as appears in the Dissolution Accounts) as a whole, being £2,925,742. This approach is misconceived;
- b. D’s interest in and entitlement was to 40% of the total value of the Partnership: that is, £1,170,296. D’s actual receipts, on dissolution, were less than this figure: as a result of the fact that D’s current account had at the time a negative balance. D had in effect borrowed from the Partnership part of his entitlement, in advance of dissolution: so this had to be set-off against the monies paid out to him thereafter. This negative balance did not affect his 40% interest in the Partnership, and does not impact on D’s entitlement for the purpose of s.42.

36. In *Sandhu v Gill* [2005] EWCA Civ 1297:

- a. the parties agreed, as partners, to contribute equal capital (some £85,000 each) towards the purchase and conversion of a property, which was to be operated as an old people’s home. It was further agreed that the net profits be divided equally between the parties.
- b. The property was purchased by the defendant with his own money for £171,450. The claimant was unable to pay his full capital contribution and so he borrowed the balance (£70,000) from the defendant, which the claimant agreed to repay from the sale of two flats that he owned.
- c. After the partnership was dissolved, the defendant (without the consent of the claimant) continued to operate the business, which proved very profitable.
- d. The first instance judge (upheld on appeal) decided that the claimant was entitled to a half share of the post-dissolution profits notwithstanding the

outstanding sum due from the claimant by way of his capital contribution. On the true construction of s.42(1) “share of the partnership assets” meant the outgoing partner’s share in the proprietary ownership of assets belonging to the partnership.

- e. The second appeal was unanimously allowed. The Court of Appeal concluded that “share of the partnership assets” meant the outgoing partner’s share in the net partnership assets and not the gross partnership assets such that the claimant’s indebtedness to the defendant fell to be deducted. Therefore, the claimant’s share of the post-dissolution profits was 21/171th.
- f. In reaching its decision that the claimant’s entitlement was based on his share of the net partnership assets and not the gross partnership assets, the Court of Appeal relied substantially upon s.44(b) which lays down the rules for distribution of assets on final settlement of accounts -

"The assets...shall be applied in the following manner and order : 1. In paying the debts and liabilities of the firm to persons who are not partners therein: 2. In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital: (3) In paying to each partner rateably what is due from the firm to him in respect of capital: (4) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible."

- g. The reference in s.42(1) to the “share of the partnership assets’ was the actual share in the ultimate residue after undertaking the accounting exercise as set out in s.44(b).

37. I remind myself that s.42(1) provides that D is entitled to a share of the profits attributable to the use of his share of the Partnership’s assets or, at his option, to interest at 5% per annum on the amount of such share. If D’s approach were right then he would be entitled to claim interest based on the value of his 40% interest in the gross assets of the Partnership without taking into account the money he effectively borrowed from the Partnership. In other words, D would be entitled to claim interest on the monies he had borrowed from the Partnership, which would be a surprising and unfair outcome. Neuberger LJ in *Sandhu v Gill* expressed the opinion (at paras [38] and [39]) that s.42(1) “is not... concerned with penalising a partner who continues the partnership.....In any event, if the excluded partner is entitled to be accorded some sort of extra right for the “insult” of the partnership business being continued against his will, it seems to me that the right he is given to elect between interest and a share of the profits, is quite sufficient.”

38. In my judgment, consistent with the decision in *Sandhu v Gill*, D is entitled to a post-dissolution profit share based on the amount of his share of the net Partnership assets as at the date of dissolution and after deduction of his indebtedness to the Partnership in order properly to reflect D’s continuing investment in the Partnership post-dissolution.

39. Therefore, I agree with the claimants that D’s share of the post-dissolution profits is 29.2%.

Rent accrual

40. The parties are in agreement that there should be an accrual for the rent payable to 'B Dale', but do not agree upon the mechanics.
41. The annual rent is £22,717 payable by way of 4 instalments:
- a. £2,500 on 1 May, 1 August and 1 November; and
 - b. £15,217 on 1 February.
42. The claimants argue that the whole of the annual rent up to 30 April 2024 should be deducted from the profits for the business for the period up to 20 December 2023 because the larger instalment payable on 1 February reflected the fact that the payment from the Rural Payments Agency was then due. This would result in a further deduction of £15,217 and taking into account the rent which had in fact been paid by 20 December 2023 (£7,500).
43. I agree with D that the better and fairer way to account for the unequal instalments is to treat the annual rent as accruing on a daily basis so that there be a further deduction of £7,063 from the profits.

Stocks in store

44. The issue for me to determine is the treatment of two invoices, which are dated after 20th December 2023, but where the relevant stock was in store before then.
45. The Partnership accountants have applied a discount of 25% to the eventual sale prices to reflect the fact that as at 20 December 2023 the crops had been harvested but not yet sold.
46. D argues that the claimants should account for 100% of the eventual sale prices being additional total profit of £10,197.24.
47. I can see no good reason for me to depart from the approach of the Partnership accountant, which I am told is standard accounting practice and in any event is the approach that had been adopted throughout the Partnership's existence.

Oats penalty

48. The claimants argue that there ought to be a deduction in the sum of £11,658 from the profits figure and representing a shortfall penalty payable on the oat crop. The loss had crystallised by 20 December 2023 as the planted crops had by then been harvested/placed in store such that there was no ability to supply anymore.
49. I agree with D that there ought not to be any such deduction since the invoice on which the shortfall penalty is recorded is dated 18 March 2024 and expressly states:

"Feb Shortfall 58mt @ £106
Jan Shortfall on 58mt @ £95"

Therefore, in my view, the loss crystallised after 20 December 2023.

Overall conclusion

50. In conclusion:

- a. S.42 is engaged, and so depreciation should not be included for the purpose of computing D's share of the Partnership profits post-dissolution.
- b. There be a notional credit of £60,000 in respect of C3's unmatched labours post-dissolution.
- c. There be a deduction of £7,063 from the post-dissolution profits to reflect the balance of the unpaid rent calculated by reference to the annual rent payable and applying a daily accrual rate to 20 December 2023.
- d. So far as the stocks in store, the claimants are not required to account for 100% of the eventual sale prices such that the 25% discounts adopted by the Partnership accountant shall apply.
- e. There be no deduction from the profits in respect of the shortfall penalty payable on the oat crop since the loss crystallised post 20 December 2023.
- f. D is entitled to a post-dissolution profit share based on the amount of his share of the net Partnership assets as at the date of dissolution and after deduction of his indebtedness to the Partnership - 29.2%.