Neutral Citation Number: [2011] IEHC 467

THE HIGH COURT

2011 8823 P

BETWEEN

CAOIMHE HAUGHEY (SUING BY HERSELF AND LAWLINE SOLICITORS)

PLAINTIFF

AND

DAVID SYNNOTT

DEFENDANT

JUDGMENT of Miss Justice Laffoy delivered on 12th day of December, 2011

1. The factual and procedural context of the application

1.1 For just over eight years prior to August 2011, the plaintiff and the defendant carried on the practice of solicitors through a partnership known as "Lawline Solicitors". The practice mainly involved personal injuries actions for clients whose business was accepted on a "no foal no fee" basis. The Lawline practice was carried on in offices at Christchurch Hall in Dublin 8. While the relationship of the plaintiff and the defendant in the run up to, and since, the initiation of these proceedings has been extremely acrimonious and there is a very considerable degree of conflict between them on factual issues, it is common case that the plaintiff and the defendant were equal partners in the Lawline partnership. It is also common case that it was the basis of the partnership that the plaintiff would be responsible for all the case files of the firm and that the defendant would be responsible for management, staff, financials, marketing and advertising matters. In fact, the defendant practised as a sole practitioner, and still does, under the title of D.J. Synnott & Co., Solicitors, from offices at St. Stephen's Green, Dublin, 2. The plaintiff and the defendant have been in dispute in relation to the Lawline partnership for some time and solicitors have been acting on behalf of each party since March 2011. Various efforts have been made to resolve the dispute between them, including a mediation process. However, all such attempts to achieve an agreed resolution were unsuccessful.

1.2 On 26th August, 2011, the plaintiff gave the defendant notice of dissolution of the partnership to take effect from Friday, 30th September, 2011. She sought his co-operation for an orderly wind-down of the affairs of the partnership and attached to her letter a schedule of matters which required to be jointly addressed during the orderly wind-down. These matters were: employees; the lease on the office premises; establishing work in progress; collection of outstanding debtors; discontinuance or disconnection of utilities and suchlike; storage of documentation, such as closed files; banking matters, such as closing current accounts and paying off the overdraft; preparation of final trading accounts to 30th September, 2011; discharge of PAYE/PRSI, VAT and other creditors; disposal or transfer of equipment, fixtures and fittings; finalisation of capital accounts as at 30th September, 2011; and future professional indemnity insurance in relation to past work. It was also suggested that there should be a dissolution agreement in writing. At that stage, the plaintiff intimated that she would be assisted by a named chartered accountant, who was experienced in advising on solicitors' practices. She asked the defendant to appoint somebody to liaise with that person. She also proposed that a joint letter, informing them of the dissolution, be sent to the practice's then current clients and she submitted a draft letter for consideration by the defendant. She stated that it would be necessary to establish the value of the work in progress attributable to each client as at 30th September, 2011 and that such value would be accounted for in the final calculations of the individual capital accounts as at 30th September, 2011. She made it clear that the name "Lawline" was owned by the partnership and that she was not agreeable to its continued use by either party.

1.3 The response to the notice of dissolution on behalf of the defendant was contained in a letter dated 12th September, 2011 from the defendant's legal adviser, Dr. Michael Twomey, to the plaintiff's solicitor. The position adopted in that response, which has been maintained ever since by the defendant, was that the partnership was governed by a written partnership agreement between the parties. It was, and continues to be, contended by the defendant that the notice of dissolution was of no effect and that the only manner in which the plaintiff could unilaterally bring the partnership to an end was by retiring as a partner and that, in the events which had happened, the defendant was entitled to treat the plaintiff as an outgoing partner. At all times, the plaintiff has disputed the existence of any written partnership agreement. The conflict on that issue cannot be resolved on this application, nor was it resolvable on the previous applications to the Court.

1.4 What provoked these proceedings was action taken by the defendant on 2nd October, 2011. Those actions, which are not really germane to the issue which is now before the Court, resulted in the plenary summons in these proceedings being issued and the plaintiff seeking an interim injunction.

1.5 The primary relief sought in the endorsement of claim on the plenary summons is a declaration that the partnership of "Lawline Solicitors" was lawfully dissolved on 30th September, 2011. Various forms of injunctive relief were sought. For present purposes it is sufficient to record that the plaintiff sought orders that –

> (a) the affairs of "Lawline Solicitors" be wound down with all necessary consequential accounts, directions and inquiries; and
>
> (b) that the defendant co-operate with the orderly wind-down of the affairs of "Lawline Solicitors" and such directions from the Court in that behalf as should be necessary.

1.6 Interim relief was granted to the plaintiff by order of the Court (Laffoy J.) made on 4th October, 2011. Subsequently, following the hearing of the plaintiff's application for interlocutory injunctive relief, which was resisted by the defendant, the Court (Laffoy J.) made an order on 7th October, 2011 ordering –

> (a) that the defendant return the files of the practice of Lawline Solicitors to the plaintiff by that evening,

(b) that the computers and server of the practice be re-instated in working order as soon as possible,

(c) that the defendant should not interfere with telephone communications to the premises of the said practice at Christchurch Hall,

(d) that neither party should interfere in the conduct of the other's practice as a solicitor,

(e) that neither party should hold herself or himself out as Lawline Solicitors, and

(f) that neither party should solicit the client business of any client who had elected to be the client of the other party.

By way of explanation of the foregoing reliefs, on 3rd October, 2010, the plaintiff had commenced practice under the style or title of C.M. Haughey, Solicitors, with an address at Christchurch Hall. The order made on 7th October, 2011 remains in place.

2. The application

2.1 By notice of motion dated 12th October, 2011, the defendant sought the following reliefs:

(1) An order pursuant to s. 28(8) of the Supreme Court of Judicature (Ireland) Act 1877 (the Act of 1877) and/or pursuant to Order 50, rule 6 of the Rules of the Superior Courts (the Rules) for the appointment of a receiver or of receiver and manager in respect of the assets of the partnership the subject of these proceedings.

(2) An Order conferring on the said receiver or receiver and manager the following powers: –

a. To get in and sell/realise the assets of the partnership.

b. To carry on the business of the partnership so far as may be necessary for the beneficial winding-up thereof.

c. To appoint a solicitor and such other agents as he may consider necessary to assist him in the performance of his duties.

d. To open and maintain one or more bank accounts in his own name for the purpose of the winding-up of the dissolved partnership.

e. To compromise with any creditors or debtors of the partnership on such terms as he may consider appropriate in the circumstances.

f. To do all such other things as may be necessary for winding-up the affairs of the partnership and distributing its assets.

(3) In the alternative, an order pursuant to s. 39 of the Partnership Act 1890 (the Act of 1890) appointing a receiver to wind-up the business and affairs of the firm, including such directions as to the sale of the assets (including goodwill) of the firm as to the Court seems just.

2.2 It is pertinent to point out that the alternative jurisdictions invoked by the defendant are designed to deal with different situations. Section 28(8) of the Act of 1877 confers on the Court jurisdiction to appoint a receiver –

"by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made . . .".

Section 39 of the Act of 1890 deals with the rights of partners as to the application of partnership property following dissolution and provides a remedy in that a partner may apply to the Court on the termination of the partnership to wind down the business and affairs of the firm. Insofar as a court would consider it necessary to appoint a receiver to wind down the business and affairs of a dissolved partnership in reliance on s. 39, it would do so following the substantive hearing, unless the plaintiff on an interlocutory application could make out a case for interlocutory relief, for example, by demonstrating that the firm's assets were in jeopardy pending the trial of the action. The pertinence of those observations is that there has been a considerable shift in the position of the defendant since this application was initiated as to the role of the receiver, as I propose to illustrate.

2.3 As regards what was envisaged by the defendant as the role and function of a receiver appointed by the Court when this application was initiated, the specific powers set out at (2) in para. 2.1 above suggest that regard was not had to the practical considerations which flowed from the dissolution of the Lawline partnership, the business of which was a solicitors' practice. From a practical point of view, the plaintiff, who was exclusively dealing with the clients of the firm before 30th September, 2011, had written to each client by letter dated 29th September, 2011 informing each that the two partners in the Lawline Solicitors firm, herself and the defendant, would be pursuing their own individual solicitor's practices, under new titles, from 1st October, 2011. She requested that each client indicate, by ticking the appropriate box, with which of the two partners the client wished to continue as client. The outcome of that process, which is hardly surprising, given that the plaintiff was exclusively dealing with the clients hitherto, was that 95% of the clients opted to continue as clients of the plaintiff. The defendant quibbles with the form of the letter sent to the clients and, in particular, the fact that a "box ticking" mechanism was deployed. That grievance is for another day.

2.4 In his grounding affidavit, which was sworn on 12th October, 2011, the defendant nominated Mr. Charles Russell, Chartered Accountant, former Manager of Russell and Company, described by the defendant as "a specialist firm of chartered accountants exclusively geared towards serving the legal profession by providing accounting, taxation and Law Society compliance services", to be appointed by the Court as the receiver and manager of the partnership. There is a dispute between the plaintiff and the defendant as to the suitability of Mr. Russell for such an appointment, because of his previous involvement with the plaintiff and the defendant.

2.5 The case made by the defendant in the grounding affidavit for the appointment of a receiver and manager was that he had become very concerned about the actions of the plaintiff, which he contended effectively amounted to misappropriation of the assets of the partnership by her, because she was operating her own practice from the partnership premises in Christchurch Hall and she was continuing to use the assets of Lawline "as if they belonged to her". He accused her of unilaterally taking over assets and goodwill of the partnership, including "the files and work in progress, debtors and outlay attaching to those files, the premises itself, telephone numbers, furniture and equipment etc". He alleged that she had "effectively asset-stripped" the dissolved partnership and appropriated to her own practice all the assets of the practice, except the name. The basis of the case made for the appointment of

a receiver and manager in the grounding affidavit was that, pending the determination of these proceedings, it is essential, in the interests of the partnership, its creditors and the clients of the partnership, that the assets of the partnership are preserved and are not appropriated to the benefit of either the defendant or the plaintiff. However, it is not clear from the grounding affidavit what the defendant envisaged the receiver and manager would actually be doing, if he was appointed, and why he needed the specific powers referred to in the notice of motion.

2.6 The plaintiff's response, in her replying affidavit sworn on 17th October, 2011, predictably, was to deny the various allegations made by the defendant. Her position was that the appointment of a receiver and manager would be extremely expensive and the cost would be wholly disproportionate to the nature and size of the business. As regards the specific powers sought in the notice of motion, she made the point that it was not necessary or appropriate for the assets to be sold or for a receiver and manager to carry on the business of the partnership. Further, she asserted that there was no need for a solicitor to be appointed. She averred that there were other "timely mechanisms which are far less expensive and onerous than the appointment of a receiver and which would serve as a fair and just and equitable solution for resolving this matter". In that context, she referred to an affidavit of Mr. Des Peelo which was filed on her behalf.

2.7 Mr. Peelo's affidavit was sworn on 14th October, 2011. In it Mr. Peelo set out his specialist knowledge and experience, in the course of his career as a chartered accountant, as an adviser, mediator, arbitrator, and expert witness in a large number of disputes and difficulties involving firms and partnerships of solicitors and accountants. Mr. Peelo set out what normally happens on the dissolution of a solicitor's practice as follows:

> "In dissolution, it is normal practice that the value of the work-in-progress on each client file is determined by a binding referral to a firm of legal costs accountants. On conclusion of each client case, and when payment is received, the determined value of the work in progress is then paid by the former partner now handling the case into the bank account of the dissolved partnership. The current bank overdraft of 'Lawline' would thereby eventually be discharged from these payments, as well as from the collection of outstanding debtors as at the date of dissolution."

Mr. Peelo's opinion was that the appropriate manner of dealing with the issues which arose on the dissolution was what had been suggested by plaintiff in the notice of dissolution of 26th August, 2011, namely, that the defendant should appoint an accountant to liaise with the plaintiff's appointee and that, in effect, the accountants would jointly manage the wind-down, including the collection of the outstanding debtors and the work in progress. In his view this would allow the private, orderly and cost effective wind-down of the "Lawline practice". There was one aspect of Mr. Peelo's affidavit which raised concern for the Court. He pointed out that –

> ". . . there are practical and legal difficulties in appointing a receiver and manager in that the professional rules, regulations, etc. of the Law Society of Ireland do not allow a non-solicitor to operate a solicitor's practice."

He expressed the belief that the Law Society would not be receptive to the concept of the appointment of a receiver and manager to a solicitor's practice. I will return to this aspect of the matter later.

2.8 The defendant's final affidavit was sworn on 19th October, 2011 and while the defendant reiterated his contention that the plaintiff had wrongfully appropriated the assets of the Lawline partnership (including "every stick of furniture"), I do not propose dwelling on that aspect of it. What I think is significant is what the affidavit tells us about the defendant's understanding of the role and function of the receiver. Having stated his view that it was just and equitable to have an independent person to deal with the wind-down of the partnership, he averred that he had been advised that a receiver and manager would have a duty to take control of the assets of the partnership in whatever manner the receiver and manager should determine to be most efficient. Further, the receiver and manager would be entitled to insist on payment to the partnership (for the benefit of the plaintiff and the defendant) of the debtors, costs and outlay due on all files acquired both by the plaintiff's firm, C.M. Haughey, Solicitors, and the smaller number of files acquired by his practice "in accordance with normal practice on transfer of files between solicitors' firms". His understanding was that the receiver and manager would have a discretion, in assuming ownership of the assets of the partnership, to allow the plaintiff to run her sole practice from the partnership's premises and to permit her to act for all the clients of the partnership, notwithstanding what he referred to as the "deficiencies in the authorities obtained by her". If the receiver and manager adopted that course, it would lead to little or no impact upon the employees and clients of the partnership. He was advised that, if the receiver and manager were to take such approach, he would have the discretion to have the debtors, fee income and outlay paid to him from all files of the partnership by the plaintiff and the defendant and, significantly, "to determine, with the assistance of Legal Costs Accountants, the amount of the fees due on each file" to the partnership and the amount due to the sole practice of the plaintiff and the defendant, as the case might be. The receiver and manager would then use that money to discharge the partnership liabilities and to divide the surplus between the partners. In addition, he could, in his discretion, allow the plaintiff to buy or account to him for the assets which the defendant alleges have been taken by her (such as the premises, furniture, equipment, etc.) and he could also seek to get value for the assets, such as the "Lawline" name.

2.9 Later in that affidavit the defendant averred to what he believed to be the value in money terms of the work in progress on the files which were formerly the files of the partnership, the outlay owed on the files, and the debtors due on the files. He also set out his understanding as to the quantum of the principal liabilities of the Lawline partnership, being a bank overdraft and the lease of the premises at Christchurch Hall. He continued:

> "The key issue for a receiver to resolve is the treatment of the financial assets and financial liabilities of the practice. It has been impossible for [the defendant and the plaintiff] to agree on this issue and in the absence of agreement it is appropriate for an independent person to decide on this issue. It is important to emphasise that the resolution of this issue will not have any impact on clients or employees."

2.10 The impression which the reference to the appointment of "an independent person to decide on this issue", and the earlier reference to the role of the receiver and manager being to "determine" the amount of fees due on each file, gives is that the defendant has in mind a person who will act in the manner of an expert or a certifying valuer under a building or other contract. This suggests to me that the defendant misconceives the role of a receiver and manager appointed by the Court in a partnership context. That role is explained in *Lindley and Banks on Partnership* (19th Ed., 2010) at para. 23 – 153 by reference to the following summary of the position by Lord Lindley:

> "The object of having a receiver appointed by the Court is to place the partnership assets under the protection of the Court, and to prevent everybody, except the officer of the Court, from in any way intermeddling with them. The object of having a manager is to have the partnership business carried on under the direction of the Court; a receiver, unless he is also appointed manager, has no power to carry on the business."

2.11 Later, contradicting the impression given earlier, the defendant averred that he appreciated that the matter cannot be resolved at the hearing of this interlocutory application, but he stated that, in the meantime, "it is just and equitable that a third party steps in and imposes a regime that is independent of the views of either" the plaintiff or the defendant. As regards the method of resolution suggested by Mr. Peelo, the thrust of the defendant's position was that there is no legal or other basis for imposing the suggestion on him in the absence of agreement. One wonders on what basis the defendant considers that an independent person with the powers he envisages the receiver and manager exercising can be imposed on the plaintiff in the absence of agreement. The defendant reiterated that the reason that "an independent court appointed receiver" is necessary is because of the breakdown in trust between the plaintiff and the defendant, which has precluded agreement being possible between them.

2.12 Mr. Russell swore an affidavit on behalf of the defendant on 27th October, 2011, the purpose of which was to give an estimate of the fees involved in his work as a receiver, if he was so appointed. Aside from his estimate of the fees, his affidavit gives some insight into his understanding of what his task would be. His understanding is that there are approximately one hundred and fifty "live files", which I understand to mean files formerly of Lawline which, since 1st October, 2011, have been transferred either to the plaintiff's sole practice or the defendant's sole practice. Mr. Russell's understanding is that, if appointed as receiver and manager by the Court, his work would be limited to "the financial interests" of the partnership "in assets and files" of the partnership and that he would have no role in relation to the running of the files or the running of the legal practice of either the plaintiff, as sole practitioner, or the defendant, as sole practitioner. As far as he is concerned, there would be no regulatory issue with the Law Society, because his role would be limited to the fees and outlay paid by clients in respect of the one hundred and fifty files. His estimate of his professional fees (which he would propose charging at the rate of €225 per hour) is in the range of €33,750 to €40,500. The impression given by Mr. Russell in his affidavit is that he also sees his role as being something akin to an expert whose function is to determine definitively what is due to the plaintiff and the defendant respectively in respect of work in progress on the clients' files up to 30th September, 2011.

2.13 Mr. Russell in his affidavit averred that he has been advised that the vast majority of the one hundred and fifty files will be completed within two years. I take that to mean that the clients' legal proceedings to which the files relate will have been determined within two years. I am not quite sure what the significance of that is. The defendant's position from his affidavit sworn on 19th October, 2011 (para. 29) seems to be that he considers that the sums due to the dissolved Lawline partnership in respect of work in progress, debtors and outlay should be paid "up-front", rather than in two or three years time, and in this connection he refers to clause 7.6 of the Law Society's Guide to Professional Conduct of Solicitors in Ireland (the Law Society's Guide).

2.14 In outlining the contents of the affidavits filed in these proceedings to date, I have focused on the evidence which I consider to be relevant to the issue to be determined on this application. The affidavits are replete with allegations and denials and counter-allegations and further denials. None of the disputed facts can be resolved on this application.

3. The position of the Law Society

3.1 As a result of the observations of Mr. Peelo in his affidavit in relation to the likely attitude of the Law Society to the concept of the appointment of a receiver and manager, the Court directed the plaintiff's solicitors, with the approval of the defendant's solicitors, to write to the Law Society to ascertain the attitude of the Society to the appointment of a receiver to a dissolved solicitors' practice. This was done and the Court received a response dated 26th October, 2011 from Mr. John Elliott, Registrar of Solicitors and Director of Regulation, which is very helpful and for which I am very grateful. Before considering what is stated in that letter, I want to highlight something which has emerged from the affidavits.

3.2 I have referred above (at para. 2.13) to the fact that the defendant, in his final affidavit, referred to the partnership being paid "up-front" in accordance with clause 7.6 of the Law Society's Guide. Clause 7.6 of the Law Society's Guide is concerned with transfer of files between solicitors. Clause 7.6, having stated that, unless a solicitor is agreeable to do so, there is no reason why the first solicitor should continue to fund a case after the client has left that solicitor, and continues:

> "If costs are due, a bill of costs should be furnished without delay. Costs may be agreed, arbitrated or taxed. 'No foal, no fee' arrangements are determined if the client moves to another solicitor. It can be implied in these contingency fee arrangements that they are conditional on the first solicitor continuing to have prosecution of the case. The first solicitor will be entitled to his fees on a *quantum meruit* basis."

In other words, it applies to a situation where a client changes solicitor, in which case, the former solicitor is entitled to be paid fees by the client up to the date of the changeover. It is not clear to me whether it is the defendant's position that the former clients of the Lawline partnership, who are now clients of either the plaintiff's sole practice or the defendant's sole practice, should now discharge the fees due to the partnership up to 30th September, 2011. If it is not, I do not consider that clause 7.6 has any application. If it is, an issue arises as to the application of clause 7.6, given that the clients of the Lawline partnership did not discharge the partnership's retainer, but rather the partnership has been dissolved.

3.3 Returning to the attitude of the Law Society, as set out in Mr. Elliott's letter, he has pointed out that there is no provision for the appointment of a receiver in the Solicitors Acts 1954 to 2008, as amended. He has stressed that the paramount concern of the Law Society, when a practice closes, is to ensure the wellbeing of the former clients of that practice and that there is a minimum disruption to those clients' affairs. The view of the Law Society is that "once a practice is dissolved, it ceases to be and hence there is no entity to which a receiver could be appointed to deal with".

3.4 The provision of the Law Society Guide to which the Court has been referred by Mr. Elliott is clause 9.14, which deals with changes in the solicitors' practice. That clause provides as follows:

> "Where the composition of a firm of solicitors is materially altered, whether by dissolution, amalgamation or cesser of practice, prompt notification to the clients of the firm of the particular circumstances of the alteration should be made. It is a matter for the client to decide which new firm he will instruct. It would not be proper for the new firm to take over the affairs of any client, including money and papers held, without the client concerned first being notified."

There is guidance as to how the clients are to be informed. However, all the Court is concerned with for present purposes is the fact that the clients have been informed and they have made their choice as to who will act for them in the future. As I understand the position, there is a tacit acceptance by the defendant of the choice made by each of the former clients of the partnership. In reality, the dispute between the parties relates to their respective entitlements in relation to the assets of the partnership as at the date of dissolution. That dispute, in my view, falls to be determined in accordance with partnership law.

4. The application of partnership law

4.1 I think it is important to record accurately the premise on which the defendant brought this application. He did so on the basis that, having regard to what has occurred since 30th September, 2011, he must accept that the Lawline partnership is at an end. He also accepts that, in the event that the Court should find that there was a written partnership agreement which bound the defendant in the manner he contends, that his remedy against the plaintiff sounds in damages only. To put it another way, the defendant accepts that the Lawline partnership has been dissolved, subject to his right to argue at the trial of the action that the plaintiff ought to have adhered to what he contends were the terms of the written partnership agreement, which he contends was in place, and that he is entitled to damages for the loss he has suffered as a result of her failure to do so. It was made clear in the oral submissions by counsel for the defendant that the defendant is not making any concession that the notice of dissolution served by the plaintiff was valid.

4.2 The position, accordingly, is that the defendant's ground for seeking the appointment of a receiver and manager is to protect his share of the assets of the partnership which are to be distributed on its winding up, but he goes further and envisages the receiver and manager appointed by the Court having the extensive and, it appears, definitive and binding powers, which are set out in his final affidavit and in Mr. Russell's affidavit.

4.3 I have already quoted the passage from *Lindley and Banks* (at para. 23 – 153) in relation to the purpose of appointing a receiver and manager. The editor goes on to comment later in that paragraph as follows:

> "Even before the advent of the Civil Procedural Rules, the courts had regard to the potentially disproportionate expense of appointing a receiver and it would now seem likely that an application for such relief will be subjected to particularly careful scrutiny in terms of the overriding objective. In addition, it would seem that the court will not, in general, favour a receivership which will have an extended duration. For this reason, the current editor is fortified in his view that the appointment of a receiver (or a receiver and manager) should normally be regarded as a remedy of last resort."

4.4 The Court has been furnished with a plethora of authorities by counsel on both sides going back as far as 1815, many of which are cited in Twomey on *Partnership Law* at para. 20.69 et. seq. The only authority which I propose to refer to is a decision of the Court of Appeal (Civil Division) in England: *Toker v. Akgul* [1996] CLY 1733. 4.5 The decision in *Toker v. Akgul* concerned an appeal against an order made at first instance appointing a receiver and a manager of a partnership business with express power to sell. The business in question could hardly be further removed from the business at issue in this case. It was the operation of a kebab restaurant. Evans L.J. identified the dispute as being essentially a financial one; the plaintiff wanted to recover his investment, however much it was, and the outcome would be a financial settlement which might or might not involve the business being sold to a third party, rather than being continued by the defendant and his wife. This led Evans L.J. to pose a rhetorical question, in the following passage:

> "Why then, one asks, should a receiver and manager with a power of sale be appointed as distinct from requiring a proper valuation of the partnership assets and a proper settlement of the partnership account? The appointment of a receiver and manager is bound to be cripplingly expensive and, as the learned Judge observed, the cost had to be assumed to be wholly disproportionate to the nature of the business."

Later, Evans L.J. stated that, insofar as the intended receiver was also to act as manager of the restaurant business, that was barely defensible as a practical solution, because the most that might be expected would be that the accountant appointed receiver would employ the defendant to act as the manager. Evans L.J. later considered whether there was an alternative available to the "nuclear weapon" of the appointment of a professional accountant as the receiver and manager of the business, and he stated as follows:

> "The alternative which is available to the court is formally to direct an inquiry as to the partnership assets and their value and generally to settle the partnership accounts. Machinery exists for such an inquiry to be ordered. [Counsel for the respondent] has said that that is an expensive procedure – as no doubt it is – and would exceed even the costs of the appointment of a receiver and manager as was ordered here. But the sensible answer to that, in my view, is to say that if an efficient but at the same time less expensive machinery is sought, then it is readily to hand, and the parties can themselves agree that an independent person suitably qualified shall act either as arbitrator or as valuer for that limited purpose. If such was agreed as it must be between the parties, then the court can easily order a formal stay of these proceedings or at least of that issue in these proceedings pending the arbitrator's award or the valuer's certification of the amounts in question."

4.6 Having regard to the analysis of the final affidavit sworn and filed on behalf of the defendant and the affidavit of Mr. Russell, the reality of the situation, in my view, is that what the defendant perceives Mr. Russell doing, if he is appointed as receiver, is what the independent valuer Evans L.J. had in mind in that passage would do, that is to say, to certify the value of the partnership assets.

5. Conclusions

5.1 I consider this application to be misconceived on a number of grounds.

5.2 The reality of the situation is that what the defendant wants, and what he is entitled to, is that the plaintiff account to the partnership for the value of the tangible assets which she has taken over from the partnership, for instance, the leasehold premises, furniture, equipment and suchlike, so that he gets the value of his entitlement on the dissolution of the partnership, on whatever basis the Court ultimately determines his entitlement, in the absence of agreement. As regards the intangible assets, which are obviously the assets which have a real value, being, primarily, the work in progress, the outlay and the debtors, it is clear from the defendant's final affidavit and, indeed, from the affidavit of Mr. Russell, that what the defendant wants, and what he is entitled to, is to have those assets valued with a view to the cash value of his entitlement on the dissolution of the partnership being measured, also on whatever basis the Court ultimately determines his entitlement, in the absence of agreement. The appointment at this interlocutory stage of a receiver under the equitable jurisdiction of the Court, who acts under the supervision of the Court, is definitely not the appropriate mechanism by which the defendant can achieve his objective.

5.3 The application is also misconceived because this is an interlocutory application. On my reading of the final affidavit of the defendant and the affidavit of Mr. Russell, what the defendant seeks is to have the assets of the dissolved partnership definitively valued by his nominee and disbursed by his nominee. Although at the outset, the defendant clearly perceived the application being an interlocutory application, in that he averred to the necessity for an order to preserve the assets pending the determination of the proceedings, given the manner in which the matter evolved, as reflected in his final affidavit and in the affidavit of Mr. Russell, on my interpretation of his position, he is now not merely seeking that the status quo be maintained pending the trial of the action. It is

interesting to note that in the *Toker v. Akgul* case, Evans L.J. observed that the application at first instance had essentially been an interlocutory application and that the plaintiff had been required to give an undertaking as to damages as part of the order at first instance, which led to his conclusion that the primary consideration was whether the order was necessary or desirable to safeguard the interests of both parties pending the trial of the action. No undertaking as to damages was proffered by the defendant on this application.

5.4 If the parties cannot by agreement between them put in place a mechanism or process outside the Court to value the assets of the partnership as at the date of dissolution, then that will have to be done by the Court following the hearing of the action, although it may be necessary for the Court to direct that accounts or inquiries be carried out by the office of the Examiner of the High Court. What the Court cannot do at this juncture, or at all, is to appoint a professional person, for example, an accountant, and confer on that person the function of determining the amount of the fees due to the partnership on each file in a manner which would bind the plaintiff against her will and the power to disburse the assets in accordance with his evaluation.

5.5 There are various mechanisms or processes by virtue of which what the defendant wishes to achieve could be achieved outside the Court proceedings, provided agreement could be reached between the plaintiff and the defendant in relation to the mechanism or process. One such process is that suggested by Mr. Peelo, namely, that each of the parties appoint an accountant experienced in the conduct of the business of a solicitors' practice, who, hopefully, would come to an agreement on the assessment of the value of the assets of the partnership. However, there would have to be some default mechanism to address the possibility that agreement could not be reached, for example, referring the matter back to Court or to arbitration. An alternative approach would be for the parties to agree to have the valuation of the partnership assets referred to arbitration, which would probably be a less costly process than prosecuting these proceedings. Another alternative, although one which I think it is unlikely that the parties to these proceedings would agree to, would be to appoint an expert or a certifying valuer. If the parties were to agree to a process outside Court, these proceedings could be adjourned pending the outcome of the process, in the manner suggested by Evans L.J. in Toker v. Akgul.

5.6 It is clear from the defendant's final affidavit that he has taken a pragmatic, and I have no doubt commonsense, view in relation to some of the assets of the partnership, for example, the leasehold interest in the office premises at Christchurch Hall, the furniture and equipment and suchlike. Obviously, the plaintiff must account to the partnership for the value of those assets, which must be determined by agreement, or by some agreed mechanism or by the Court. There is also the question of the discharge of the partnership liabilities. In relation to dealing with that obligation, the defendant's distrust of the plaintiff, whether justified or not, could be obviated if the two accountant approach recommended by Mr. Peelo is adopted.

5.7 If the parties cannot agree to have their differences dealt with outside these proceedings, then the proceedings will have to be case managed with a view to bringing them to an early hearing, to alleviate the defendant's concerns arising from the degree of control the plaintiff has over the assets of the partnership.

5.8 In conclusion, there are a number of matters which I consider it important to clarify. First, in addressing the issue on this application, I have formed no view as to whether any allegation or counter-allegation made by one party against the other is well founded. Secondly, I have not formed the view that it would never be appropriate to appoint a receiver or a receiver and manager in the winding up of a solicitors' practice under the supervision of the Court. Indeed, counsel for the defendant referred the Court to Ray v. Flower Ellis (1912) 56 Sol. Jo. 724 CA, in which, in an action for dissolution of a partnership between solicitors, a receiver had been appointed to get in outstanding costs due from clients. Thirdly, notwithstanding my observations at para. 3.2 above in relation to the application or otherwise of clause 7.6 of the Law Society's Guide, given that the change of solicitor was not instigated by the clients or because of the conduct of the clients, but was a consequence of the dissolution of the Lawline partnership, I have formed no view as to whether there is a crystallised and currently enforceable obligation as between the plaintiff and the defendant as regards the files transferred to their sole practices respectively, on the one hand, and the partnership, on the other hand, entitling the partnership to fees due on a *quantum meruit* basis for work done by the partnership up to 30th September, 2011. Whether there is such an obligation may have to be decided by the Court. If there is, how it is discharged, whether by payment, undertaking or otherwise, may have to be decided by the Court, if agreement cannot be reached between the parties.

6. Order

6.1 There will be an order dismissing the defendant's application. However, when the parties have had an opportunity to consider this judgment, I will hear further submissions as to the manner in which the matter should proceed.