



Neutral Citation Number: [2023] EWHC 3028 (Ch)

Claim No.: BL-2018-001918

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 30 November 2023

**Before :**

**Mr NICHOLAS THOMPSELL**  
**sitting as a Deputy Judge of the High Court**

**BETWEEN**

**JASWINDER SINGH BAHIA** **Claimant**  
**- and -**  
**(1) INDERDEEP SINGH SIDHU**  
**(as Personal Representative of the Estate of TARA SINGH SIDHU)**  
**(2) A STAR LIQUORMART LIMITED** **Defendants**

**BETWEEN**

**INDERDEEP SINGH SIDHU**  
**(as Personal Representative of the Estate of TARA SINGH SIDHU)**  
**(2) SATPAL KAUR SIDHU**  
**(in her personal capacity and as Personal Representative of the Estate of TARA SINGH SIDHU)** **Part 20 Claimants**  
**- and -**  
**(1) JASWINDER SINGH BAHIA**  
**(2) BALBIR KAUR BAHIA** **Part 20 Defendants**

Mr Robert-Jan Temmink KC and Mr Gabriel Buttimore (instructed by Hill Dickinson LLP) for the Claimant and

Mr Edward Levey KC and Mr John Carl Townsend (instructed by Anthony Gold LLP) for the First Defendant and Part 20 Claimants

Hearing date: 2<sup>nd</sup> " November 2023

**JUDGMENT**

## **Mr Nicholas Thompsell:**

### **1. INTRODUCTION**

- 1) This hearing is consequent upon a trial of the action which took place in January and February 2022 before Joanna Smith J.
- 2) The learned judge's judgment, reported as *Bahia v Sidhu* [2020] EWHC 875 (Ch) (the "**Principal Judgment**") provided, in particular at [1]-[13], a detailed description of the underlying facts and I will not seek to improve on that summary. I will also adopt the definitions adopted in the Principal Judgment. This will include identifying some of the parties by their first name, and, like Joanna Smith J, I mean no disrespect by this.
- 3) In the Principal Judgment, the judge was critical of the evidence of Mrs Sidhu and of her son, the First Defendant, Andy. To a very substantial extent the judge settled the matters in issue in favour of the Bahias and against the Sidhus. She ordered the Sidhus to make various payments to restore to the Partnership monies where there had been a failure to account for money that should properly have been received by the Partnership or where they had taken benefits from the Partnership.
- 4) The Claimant has calculated the total amounts owed to the partnership and to ASL at £3,634,359.25 as of 1 November 2023. I will call these amounts, as they are finally calculated the "**Partnership Judgment Debts**". To this there needs to be added a further £50,052.49 (calculated on the same basis) owed to Mr Bahia. I will call this amount, as they are finally calculated the "**Bahia Judgment Debt**". I will call the Partnership Judgment Debt and the Bahia Judgment Debt taken together the "**Judgment Debts**"). Whilst these exact amounts were not confirmed during the trial, Mr Levey, who was representing the Sidhus, acknowledged that these amounts, if not correct, were close.
- 5) These sums remain unpaid. The Sidhus argue that they do not have liquid resources to repay those sums in the absence of there first being a disposal of the Partnership property assets and a distribution of the net proceeds of winding up of the Partnership. They propose an auction sale of the Partnership's property investments for this purpose.
- 6) The hearing before me was the adjourned disposal hearing ordered by Joanna Smith J pursuant to paragraph 11 of her order dated 25 October 2022 ("the **October Order**").
- 7) At the hearing the Claimant was represented by Mr Robert-Jan Temmink KC and Mr Gabriel Buttimore. The First Defendant was represented by Mr Edward Levey KC and Mr John Carl Townsend. I am grateful to all counsel for their helpful submissions. The Second Defendant (which has been joined purely for enforcement purposes) was not represented.

### **2. MATTERS BEFORE THE COURT**

- 8) The purpose of the hearing before me was to determine to matters arising from paragraph 11 of the October Order. This required a hearing to determine:

- i) whether the properties of the Partnership should be sold or whether they should be dealt with, or disposed of, in a different manner and, on either alternative, what directions would be appropriate; and
  - ii) whether Mr Pabla should continue as the Receiver or whether he should be replaced by an alternative receiver and, if so, what directions would be appropriate.
- 9) In relation to these points, the Bahias (in summary) and by means of an application notice dated 23 May 2023, had asked the court:
  - i) to order a transfer of partnership properties to Mr Bahia by way of an interim distribution from the Partnership of certain properties up to the value (based on a valuation) of the amounts owed by the Sidhus; and
  - ii) to replace Mr Pabla as Receiver with a director of Alexander Lawson Surveyors Ltd, a firm that is currently managing the properties on behalf of the Receiver.
- 10) By contrast, the Sidhus were asking the court:
  - i) to order a sale of the partnership properties at auction; and
  - ii) to appoint a new receiver to be chosen from a list of three potential receivers proposed by them or by default to be nominated by a third party.
- 11) I will deal first with the first question: whether a sale of the properties should be ordered.

### **3. EVIDENCE**

- 12) Both questions are essentially questions about how the court should use its discretion in supervising the winding up of the Partnership (and of the Gateway Partnership). This will largely turn on the submissions made on behalf of each side, rather than any particular evidential finding.
- 13) However, these submissions have been supported by some evidence on each side including:
  - i) witness statements by Hardeep (Mr Hardeep Bahia);
  - ii) witness statements by Andy;
  - iii) a witness statement by Mr Pabla, the current receiver, which explains the current management arrangements involving Alexander Lawson;
  - iv) a witness statement by Mr Clifford, a solicitor representing the Sidhus.
- 14) These statements largely are helpful in explaining the motivations on each side and on how the receivership has operated to date.

- 15) In addition, we have a valuation of the relevant properties that has been undertaken at the instructions of Mr Pabla as Receiver dated around June 2022 and numerous papers, mostly documenting various exchanges between each side.

#### 4. LEGAL PRINCIPLES RELEVANT TO THE FIRST QUESTION

- 16) I do not consider that there is very much between the parties in relation to the law applicable to first question – whether I should order a sale of the properties.
- 17) The statutory provision relating to the application of partnership property on dissolution of the partnership is section 39 Partnership Act 1890. This provides as follows:

**"39. Rights of partners as to application of partnership property.**

On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm."

- 18) I note, as did Lord Brightman in *Latchan v Martin* (1984) 134 N.L.J. 745, that this section does not require surplus assets after creditors have been paid to be sold. It requires merely that they be "*applied in payment of what may be due to the partners respectively*".
- 19) Both sides referred me to the description put forward in *Lindley & Banks* (21st edition) at [23-314] to the effect that, in the event of a general dissolution, each partner is normally entitled to insist that all the partnership property is sold even if the firm's debts and liabilities could be discharged without such a sale. However, as was found in the case of *Benge v Benge* [2017] EWHC 2124 at [46-47], summarising the effect of *Syers v Syers* (1876) 1 App Cas 174, this normal position is usually adopted in order that justice may be done to all parties when no other course has been or can be agreed on. As was said in that case at [47] (drawing on a quotation from Lord Lindley in the then current edition of *Lindley & Banks*):

"47. It is not an arbitrary rule, inflexibly applied in all cases whether it is necessary or not, and although if one partner or his representatives insist on a sale, the court may not be able to refuse to enforce that right, still the court is always inclined to accede to any other mode of settlement which may be fair and just between the parties. The court should always consider what alternatives there are as to a sale.

and at [50]

"50. It is a mistake, as was observed in the *Hugh Stevenson & Sons Ltd v Aktiengesellschaft fur Cartonnagen-Industrie* [1917] 1 KB 842, to suppose that winding up under the Partnership Act must necessarily involve a sale. It is a matter of the discretion of the court. But the cases show that a sale is the normal starting point, and it has been referred to as a presumption as to what is just in relation to winding up."

20) In *Campbell v Campbell* [2017] EWHC 182 (Ch), Mr M H Rosen QC sitting as a Deputy High Court Judge very helpfully summarised the law. At [155] he said:

"155. I accept the submissions on behalf of Richard as to the breadth of the Court's powers in this regard, essentially as follows:-

(a) The Court exercises a supervisory jurisdiction over the winding up of partnerships and has a discretionary power to fashion such order as is appropriate in all of the circumstances: *Lindley & Banks*, para 25-52 and *Hurst v Bryk* [2002] 1 AC 185, 194."

(b) The Court has power to order a partition or in specie distribution of the assets, and (if necessary) to order an equalisation payment: see *Blackett-Ord & Haren*, paras 18.42 to 18.50 and *Pick v Pick* [2007] All ER (D) 318.

(c) In addition, section 14 of the Trusts of Land and Appointment of Trustees Act 1996 also gives the Court the power to order partition of co-owned land, with or without beneficiary consent, and with or without an equalisation payment: see *Hopper v Hopper* [2008] EWHC 228 (Ch).

(d) The Court has power to make an order that one partner buy out the interest of the other - a so-called *Syers v Syers* (1876) 1 App Cas 174 order (see *Lindley & Banks*, paras 23-183 to 23-192) – which may be permissive or compulsory: *Mullins v Laughton* [2003] Ch 250 and *Lindley & Banks*, para 23-191.

(e) Where one partner has appropriated an asset for himself, the Court can order that he account for its value: *Blackett-Ord & Haren*, para 18.41. Such order may relate to the whole or part of a partner's share, although there may be no practical distinction between a partial order and an in specie distribution order: see *Lindley & Banks*, para 23-190.

(f) The Court's powers are also wide enough to require (by mandatory injunction pursuant to section 37 of the Senior Courts Act 1981) one or more the partners to take particular steps with regard to the partnership assets, where such steps may be necessary to realise, preserve or enhance the value of the assets.

(g) When the Court orders a sale, it has a discretion as to the mode of the sale. In particular, whether there is to be public marketing or simply an auction between the partners; and, where there is public marketing, whether the partners are to have liberty to bid: see Blackett-Ord & Haren, paras 18.43 and 18.44.”

- 21) Counsel on both sides have referred me to a number of other cases. For example, Mr Levey quoted some passages from the *Hugh Stevenson & Sons* case mentioned above to the effect that, in the absence of special provisions no partner can force another partner against his will to purchase the other partner's share at a value. Mr Temmink referred me to another potentially applicable jurisdiction (touched on in the above citation) under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996, as well as referring to the court's statutory and/or inherent jurisdiction. However, there is really no reason for me to go any further. Both counsel agree, and I think it is clear from the authorities I have mentioned above, that it is the normal position that a court will order a sale of properties, but the court has a discretion to make a different order.
- 22) Mr Levey wanted to emphasise that it was exceptional for the courts to depart from the normal position. He quoted passages from *Hammond v Brearley* [1992] 12 WLUK 185, where Hoffman LJ (as he then was), observed:

"There is nothing in the Partnership Act 1890 which positively requires that the winding-up of a partnership shall be effected by a sale. It is true that a sale by auction is the normal way of realising the assets for the payment of debts and distribution to the partners. But the decision of the House of Lords in *Syers v. Syers* [1876] 1 AC 174 ... shows that in exceptional cases the court has a discretion to take a different course, such as allowing partners who wish to continue the business to acquire the share of another partner at a valuation."

- 23) However, having recognised the existence of the discretion which could be used in 'exceptional cases', Hoffmann LJ went on to observe that it was:

“notorious in the Chancery Division that *Syers v. Syers* is an authority far more frequently cited by counsel than applied”.

- 24) Nevertheless, he recognised that the discretion was a “*valuable one*” which the court:

“*should not hesitate to use when it suits the justice of the case*”,

- 25) The point, then, that I need to consider is: what order does the justice of this case demand?

## **5. THE PARTIES' RIVAL PROPOSALS**

- 26) From the skeleton arguments, and through helpful indications given during the hearing, it appears that the position of each side had been slightly amended from that originally

put forward by them. In deciding what order to make, I will consider each side's proposal as so modified.

27) First, I note that the Claimant has moved away from the proposal originally put forward. This was that properties should be transferred to the Claimant at their value as shown in the valuation undertaken by Alexander Lawson on the instructions of Mr Pabla.

a) The properties in question, which I will refer to as the "**Schedule A properties**", are (together with their values in the Alexander Lawson valuation report) the following:

#	Property	Value
1	44 – 48 (including 44A and 48A) King Street, Southall, Middlesex UB2 4DB (Title Number AGL23536)	2,000,000
2	99 – 101 High Road, East Finchley, London N2 8AG (Title Numbers MX374345 and MX372197)	1,625,000
3	47 Stroud Green, Finsbury Park, London N4 3EF (Title Number LN243024)	750,000
4	2/2a The Broadway, Ealing, London W13 0SR (Title Number MX176191)	1,200,000
		£5,575,000

28) The Claimant's position has moved in two ways:

a) Whilst it was not the Claimant's original proposal to transfer 8 King Street Southall in this list, in the light of the Sidhus' valuation of that property, the Claimant was willing to have the property transferred as though it were a Schedule A property, at the highest valuation put forward by the Sidhus.

b) Secondly the Claimant would be prepared for the properties be transferred on the basis that the value credited for the transfer (on a portfolio basis) would be the higher of:

i) the value stated in the Alexander Lawson valuation report; or

ii) a new value to be assessed after the transfer by expert determination conducted by an independent valuer, to be jointly appointed by the parties.

29) The first of these (apparent) concessions is not helpful. It appeared that, despite Andy having proposed a valuation for 8 King Street Southall (at a point when it was proposed that this property might be transferred to the Sidhus), Andy was not happy for a transfer to the Claimant at this valuation. I think it is appropriate that I ignore this first point as it does not in my view amount to a helpful concession or assist in demonstrating any real agreement between the parties as to the proper valuation for this property.

30) However, the second of these points does constitute a very substantial concession and provides an answer to some of the main complaints that the Sidhus have made concerning the Claimant's original proposal, based on their concerns regarding the Alexander Lawson valuation report.

- 31) When I refer to the "Claimant's Proposal" I am referring to the Claimant's original proposal as amended by this concession.
- 32) Secondly, the First Defendant has also offered an amendment to his original proposal that all properties be sold at auction, with both the Bahias and the Sidhus being able to bid if they want them. One of the complaints that the Claimant has made concerning this proposal was that this gave rise to an inequality between the parties. This was because the Sidhus, who had been found to have taken substantial monies out of the Partnership, would be in a position to outbid the Bahias using cash that had been improperly taken from the Partnership, or borrowings against properties purchased with such cash. The First Defendant proposed to address this point by allowing the Bahias to bid at auction and pay using a credit from the Partnership, so that there was no need for them to find cash. Furthermore, they offered that the transaction (if the Bahias turned out to be the highest bidder) would be documented in a similar way as it would be documented if they acquired the relevant property by way of a distribution *in specie* out of the Partnership estate, so as to provide (in the submission of the First Defendant) the same tax treatment as that sought by the Claimant within the Claimant's proposal.
- 33) When I refer to the "Defendants' Proposal" I am referring to the Defendants' original proposal as amended by these concessions.
- 34) In my view, there are reasons for and against each of these proposals and I have carefully considered how I should weigh them.
- 35) It may be noted that both proposals rely on there being interim distributions in relation to the winding up of the Partnership. I do not see this being an objection to either proposal and it appears that counsel on both sides accepted that there was no problem in principle with interim distributions.

## **6. REASONS FAVOURING THE CLAIMANT'S PROPOSAL**

- 36) The Claimant has put forward (either through counsel or through Hardeep's witness statements), the following principal reasons in support of the Claimant's proposal. I will consider each of these individually.

### ***a) The Background***

- 37) First, it is argued that I should consider this matter in the light of the background that there has been a substantial and unlawful extraction of value from the Partnership by the Sidhus. Mr Bahia is the injured party. Further, the Claimant argues that the Sidhus by disposing of the bulk of the assets in Mr Sidhu's estate (excepting his partnership interest as a former partner) have deliberately engineered a situation where Andy can say that the estate cannot pay until it receives its share on dissolution. In the Claimant's submission, the circumstances are tantamount to an abuse of process, which the court under its inherent jurisdiction, can and should control by making allowing a transfer of the properties to Mr Bahia at a valuation and setting off the sums due by the Sidhus.



- 38) Mr Levey fairly makes the point that the wrongful conduct of the Sidhus has been dealt with through the orders already made against them, and I accept his point that although Mr Bahia may be seen as occupying the moral high ground in this case, this should not cause me to choose his proposal over a more just proposal.
- 39) However, I do consider that there remains something in the Claimant's point in that, as the injured party he should not be kept out of receiving value from the Partnership (including the monies which the court has ordered that the Sidhus should restore to Partnership) any longer than is necessary. Mr Levey has challenged the principle of this argument. He has pointed out that if the Claimant wishes to obtain payment of the Judgment Debt, he can pursue other means of collecting this. Nevertheless, I accept the Claimant's case that there are major difficulties in bringing enforcement proceedings against the estate of a deceased where the substantial assets of the estate (other than the deceased's partnership share) have already been paid away.
- 40) In my view there is a major advantage in the Claimant's proposal, in that it would allow the Claimant to extract value from the Partnership almost immediately, and in effect to receive payments in respect of the Judgment Debts without waiting for a third-party sale of the properties.
- 41) Mr Levey challenges this analysis as it relates to the speed of the transaction, and I will consider this matter further below.

***b) The wishes of the surviving partner***

- 42) Secondly, the Claimant is the sole remaining former partner of the Partnership, and as such his wishes in relation to how the Partnership property is realised should have weight. By contrast, the Sidhus are merely persons entitled to the value of the partnership interest of a former partner, Mr Sidhu. Mr Bahia's wishes are to continue as far as possible with the former business of the Partnership (which he has helped build up over many years) by retaining properties representing his half of the partnership assets (after payment of debts, and the restoration of the amounts due to the Partnership by the Sidhus).
- 43) I treat with scepticism some of the claims that the Claimant has an emotional attachment to these properties. As Mr Levey points out they comprise, without disrespect, an unexceptional portfolio of mixed commercial and residential properties that, if Mr Bahia were to be unable to buy them at auction, could easily be replaced by comparable properties. I do, however, see some force in the arguments that it would be more challenging for Mr Bahia to seek to assemble a new portfolio than it would be for him to continue with a rental portfolio that he is already familiar with, and that replacing the portfolio it would involve both expense and effort (which would be difficult for him at the age of 74). Mr Levey's argument that if these properties have a special value to Mr Bahia, he can bid for them and retain them that way is a partial but not, I think, complete answer to this point, as the proposal for a bid introduces uncertainty into the outcome.

**c) *Reliance on income***

44) Third, Hardeep in a witness statement has suggested that Mr Bahia is dependent on these properties for an income. I agree with Mr Levey that this is not a good point since Mr Bahia following the sale of these properties would receive his share of proceeds of sale and could easily invest these to provide income. However, the point still has some weight in that under the First Defendant's proposal there could be a gap between the disposal of the Properties and his being able to receive and reinvest the proceeds – particularly if his favoured investment was property. This latter consideration, however, is really only a different aspect of the points considered in the previous paragraph.

**d) *Costs of sale***

45) Fourthly, there are costs involved in a sale at auction that would be avoided by the Claimant's proposal. Mr Levey at the hearing produced an email from Allsop LLP where that firm offered to auction properties at a discounted price of at auction fee of £1,250 per lot and other costs totalling £400 and a sale fee of 1% of the hammer price. In addition, there would be VAT on all such costs. I do not know whether such VAT might be reclaimable. Avoiding these costs is, I think, a point in favour of the Claimant's proposal, although it is partly balanced by the cost of obtaining further professional valuations that would be inherent in the Claimant's proposal.

**e) *Tax saving***

46) Finally, Mr Bahia believes that there is a large tax saving he would enjoy if the relevant properties were to be distributed to him in the winding up, as opposed to there being a sale of the properties (whether to a third party or to him).

47) Having reviewed quickly (and inexpertly) the tax advice upon which he relies, I note that there are assumptions underlying the advice which appear to me not to be satisfied. As a result, it is not clear to me that Mr Bahia is correct in this. Neither am I able to assess whether the amendments mentioned above proposed to the First Defendant's original proposal would allow him to retain this tax advantage even in the event of there being an auction and his buying the property within the auction. Further, I am not satisfied that it is the court's role to assist one party in saving tax. For all these reasons, I will not attach any weight to this argument.

**7. REASONS AGAINST THE CLAIMANT'S PROPOSAL**

48) The following reasons have been cited against the Claimant's proposal.

**a) *Unreliability of the Alexander Lawson valuation report***

49) First, a number of specific points have been made as to the reliability of the Alexander Lawson valuation report. This was not a report produced for the benefit of the court. It was produced on the instructions of Mr Pabla (who is the Receiver and also a solicitor representing the Claimant), and the full content of those instructions are unknown. The report is now over a year old and valuations may have changed in the meantime. Some

specific criticisms are made concerning an uneven approach to matters such as planning permission – the First Defendant argues that properties that Mr Bahia wished to purchase appear to have been treated on more favourable assumptions than those that Mr Bahia proposed to offer for sale or would allow the Sidhus to purchase. Further, there are numerous references to the valuation being provided for the benefit of a proposed lender, and suggestions at various points of matters that a lender should take a prudent approach in deciding how much to lend on the security of the properties. Whilst these references have been explained as arising from the use of a template document and Alexander Lawson has confirmed that it did produce its report for the purpose of an open market valuation, I agree with Mr Levey, that the lack of care on this point would be of concern to someone invited to rely on the report.

50) I would have given these points considerable weight in relation to the original iteration of the Claimant's proposal, where these properties were to be transferred at the values contained in this valuation report. However, in the revised version of the Claimant's proposal that was discussed during the hearing, I consider that these objections are fully negated by the proposal that there be a further independent valuation and, if that shows the portfolio acquired by Mr Bahia to have a greater value, for that greater value to be ascribed to these properties.

***b) Speed of sale at auction***

51) Secondly, the First Defendant challenges the assertion that the Claimant's proposal would lead to a faster or easier resolution than an auction. Mr Levey made much of the difficulties of agreeing instructions to a single valuer and the possibility that once a valuation was obtained it might be challenged, leading to further court proceedings.

52) I was not persuaded by these points:

i) First, there was no reason to delay transferring the properties until the valuation had been settled, since under the Claimant's proposal, a minimum price for these properties would be known (on the basis of the Alexander Lawson valuation report) and therefore he would give an immediate credit for this amount and allow this transaction at the same time to allow satisfaction of the Judgment Debts. Any remaining issue coming out of the new valuation would come out in the wash on the final settlement of debts and there was ample time for this to be settled before final settlement of debts was due to happen.

ii) Secondly it seemed to me that a properly drafted order ought to allow the appointment of a jointly instructed valuer to be in sufficiently clear terms to avoid challenge;

iii) Thirdly, if the valuer was acting as an independent expert whose decision would be final in the absence of manifest error, there would be very little margin for disputes to be made about his findings.

- iv) Fourthly, it seems to me that a sale at auction could take longer than the First Defendant's optimistic suggestion. Whilst a letter or email from Allsop LLP (only provided on the date of the hearing) suggested that there might be some chance of getting the properties into an auction in December, it seemed to me that the timing for this might be tight and the next auction offered by Allsop LLP was not until February. I was also not convinced that it was for the court to select the best auctioneer – particularly with no evidence of how that potential auctioneer had been selected by the First Defendant. Such a matter would be best dealt with by the Receiver, and it might take the Receiver some time to satisfy itself that it had the best arrangements for an auction.
- v) Furthermore, if there was a sale at auction, it would seem unwise for the Receiver to choose, or for the court to order, for that sale to be without reserve. Logically, it might be difficult to justify a reserve that was substantially below the valuations in the Alexander Lawson valuation report, which for all its flaws remains the best evidence available at present as the value of the properties. There was a real possibility that properties might not sell as a result of a reserve being applied, and this would lead to further delay.

***b) Sale by auction is normal and offers the best evidence of market value***

- 53) The final (or perhaps the first) reason is that, as a matter of principle, offering properties at auction provides the best evidence of market value of the property and for that reason should be preferable to relying on a valuation, however independently and competently compiled. This is the reason that underpins the court's normal approach of offering a sale at auction and it is only rarely departed from.
- 54) There is some force in this argument, but I do not see it as being determinative of the approach that the court must take. The proposition that an auction will always provide the market price for a property is in essence a tautological one, since it depends on defining the market price as the price that is achieved at the particular auction. If it were true that auctions always produced the *best* price for a property, then all properties would be sold at auction. In fact, I think I can take judicial notice of the practice that in many cases property sellers prefer to obtain a professional valuation and then to accept offers for the property at, or at least by reference, to that valuation.

**8. REASONS FAVOURING THE FIRST DEFENDANT'S PROPOSAL**

- 55) The reasons favouring the First Defendant's proposal are firstly the flip side of the criticisms that have been made of the Claimant's proposal: an order to sell at auction is the normal order, and is superior to reliance on a valuation (even one made on the best information by the most expert and independent valuers) since sale at auction offers a speedy and certain method of determining and receiving value.
- 56) A further point was mentioned that it was not fair to allow the Claimant to choose which properties he wanted. The Sidhus might equally wish to have a similar arrangement to acquire properties by way of distribution. This point was not advanced with any great confidence. Whilst there has been some mention in the correspondence

that the Sidhus might want an opportunity to acquire the properties, no particular property had been earmarked that they said that they wanted. At the hearing, Mr Levey asked his client whether there was any property he particularly desired and no such property was identified. The Sidhus case in this matter is that they are not, without obtaining a distribution of cash from the Partnership able to make any payment in respect of the Judgment Debts, and so I must treat with scepticism the proposition that they would have cash available to bid at auction.

- 57) Had I formed an impression that there was any real desire and ability on the part of the Sidhus to acquire any of the properties, I might have considered introducing into the arrangements some device to allocate the properties fairly between the sides, but I did not consider that this was the case, and in the absence of there being genuine desire and ability on the part of the Sidhus to purchase particular properties, I attach very little weight to this argument.

## **9. REASONS AGAINST THE FIRST DEFENDANT'S PROPOSAL**

- 58) The reasons against the First Defendant's proposal similarly are for the most part the flip side of the advantages of the Claimant's proposal.

## **10. CONCLUSION IN RELATION TO THE FIRST ISSUE**

- 59) Having considered carefully all the arguments put before me, I am persuaded that I should favour the Claimant's proposal (as it has been developed above). Whilst both proposals are, workable and it would not be unfair as such to order either proposal, I consider that the Claimant's proposal has a number of advantages and that the circumstances render it just that I should choose this proposal.
- 60) First it allows a very swift repayment of the Judgment Debts. Whilst the sale at auction might also produce cash, half of which could be used to reduce the Judgment Debts, there remains uncertainty as to how quickly this would come about, and assuming that a reserve was put on properties, there would be no certainty as to whether particular properties would sell at auction. Mr Bahia is entitled to see the Judgment Debts repaid and I should pay special attention to his preferences as to the best way to achieve this.
- 61) Secondly it avoids the additional costs of an auction (although this is tempered by the additional cost of an experts' report).
- 62) These advantages, accrue to both parties. Both parties have an interest in the Judgment Debts being extinguished as soon as possible and in minimising the costs of sale of the properties.
- 63) I also have regard to the fact that Mr Bahia, as the only former partner is entitled to a say in the means of disposal of the properties. Whilst such entitlement does not entitle him to propose something that would be unfair to the estate of the other partner, where there are two proposals that are both fair and workable, I think it is appropriate that I have regard to his wishes in exercising my discretion.

- 64) To place my decision in the context of the remarks of Hoffmann LJ in *Hammond v Brearley*, I acknowledge that departure from the normal order of a sale by auction is exceptional but I have the discretion to make such an exceptional order, and for the reasons I have outlined above, I consider that the order I propose making suits the justice of the case and therefore I should not hesitate in making it.
- 65) I will at the end of this judgment sketch the major elements that I consider should be incorporated in an order to deal with my decision on this point.

## **11. THE APPOINTMENT OF A REPLACEMENT RECEIVER**

- 66) The second issue relates to the appointment of a replacement receiver. Mr Pabla intends to resign as Receiver. The proposal from the Claimant is that Mr Savvas Socratous of Alexander Lawson Surveyors Ltd, who are currently managing the properties on behalf of Mr Pabla, should be appointed as Receiver in his place.
- 67) The Sidhus have objected to this proposal and instead propose that they nominate three potential receivers from amongst whom Mr Bahia has to choose one. At the hearing. Mr Levey conceded that the Sidhus would accept reversing this arrangement so that the Claimant would nominate three potential receivers and the First Defendant would choose one. They would also accept having a receiver nominated by the Royal Institute of Chartered Surveyors. The Claimant also said he would accept this latter arrangement if the court did not accept the Claimant's principal submission that Mr Socratous should be appointed as the most appropriate means of securing the continued management of the properties.
- 68) The advantages that have been put forward by the Claimant for appointing Mr Socratous relate to his knowledge of the property portfolio and the cost and inconvenience involved in appointing a new receiver who does not have knowledge of the portfolio. Further, it is suggested that there may be various legal and/or planning matters on behalf of the Partnership that are in train and it would be inconvenient to change receiver whilst these are going on.
- 69) Against these advantages, the Sidhus have posited two major objections. The most fundamental objection mentioned is the need for the Receiver to be and to be seen to be entirely independent and impartial.
- 70) This objection seemed to me to be more of an objection to the original appointment of Mr Pabla (who also acts as solicitor to the Claimant), rather than to the appointment of Mr Socratous. The objection to Mr Pabla was not accepted by Joanna Smith J when she ordered Mr Pabla to be appointed receiver and I think there is substantially less in this objection when one considers the position of Mr Socratous. Mr Socratous, the court understands, had no previous dealings either with the Claimant or with Mr Pabla and there is no reason to believe why he would not be an unbiased receiver.
- 71) The second objection made was that the Sidhus had some concerns whether the properties had been managed competently to date by Mr Pabla or by Mr Socratous' firm Alexander Lawson. However, insofar that point was substantiated at all, it would seem

that the any criticisms were directed at Mr Pabla rather than at Mr Socratous or Alexander Lawson. I do not consider that the First Defendant substantiated any criticism against Mr Socratous or Alexander Lawson.

- 72) The Claimant said that it considered that Mr Socratous and Alexander Lawson offered good value in relation to the role of receiver. It appears that Alexander Lawson had not to date charged the maximum amount that it could have done under its terms of business, in that it charged for management of rental properties only when rents were being received.
- 73) Nevertheless, it seems to me that there is a point here. Whether Alexander Lawson offers good value has not been tested by competitive tender, except that Mr Pabla, no doubt, originally took some care in deciding to appoint this firm to manage the properties.
- 74) At the hearing, Mr Levey offered to withdraw the First Defendant's objection to Mr Socratous if the court found in favour of the First Defendant in relation to the first issue. He acknowledged that it would slow down the disposal of the properties if there were to be a change of receiver in the meantime, and if the properties were to be sold at auction by order of the court, there would be little discretion in relation to the disposal of the portfolio.
- 75) Whilst I do have some residual concern about there having been no formal tender process to check that Alexander Lawson is offering value for money, I consider that, certainly at present, the disadvantages of a change of the management of the property outweigh any such concern. I accept Mr Pabla's evidence in his witness statement as to the suitability of Mr Socratous as Receiver and of Alexander Lawson as property managers and I do not think there is anything in the arguments offered by the First Defendant to counter the desirability of avoiding a change of the management. The First Defendant has not substantiated any bias (or appearance of bias) or overcharging or incompetence in relation to the management of the properties.
- 76) I therefore will order for Mr Socratous to be appointed as Receiver on Mr Pabla's retirement.
- 77) To deal with my residual doubt concerning that there has been no formal demonstration that Alexander Lawson offers value for money, I will acknowledge that the First Defendant (or the Claimant) should have to reapply to the court, if in the future they should obtain any evidence that the services provided by Alexander Lawson could be obtained on better terms elsewhere or that there is any evidence of the properties not being properly managed. If such were established, it might be appropriate to retender the appointment of Alexander Lawson, and, in such circumstances, it might also be appropriate to reconsider the appointment of the Receiver.

## **11. CONCLUSION**

- 78) I will ask counsel for the parties to agree an order reflecting my decisions above. The order should provide for the following:

- i) That Mr Savvas Socratous of Alexander Lawson Surveyors Ltd be appointed as Receiver of the partnerships (together with all its property and assets) in place of Mr Rajesh Pabla and with like powers. However, the order should allow leave for the First Defendant (or the Claimant) to reapply to the court, if in the future they should obtain any evidence that the services provided by Alexander Lawson could be obtained on better terms elsewhere or that the properties are not being properly managed.
- ii) The Schedule A properties as defined above should, as soon as practicable after the making of the order, be transferred to the Claimant from the Partnership as a distribution *in specie* in the winding up. The distribution shall be regarded in the final accounts of the Partnership as a transfer in value equal to the finally determined value of those properties in favour of the Claimant except that an amount equal to the Defendant's liability on the Bahia Judgment Debt as at the time of the distribution shall be regarded as having been made in favour of the First Defendant but then transferred from the First Defendant to the Claimant in satisfaction of the Bahia Judgment Debt.
- iii) At the same time as completion of the transfer of the Schedule A Properties, First Defendant shall be deemed to receive a distribution in the form of satisfaction of the First Defendant's obligations in relation to the Partnership Judgment Debts.
- iv) The value of the Schedule A properties for the purposes of the preceding subparagraphs should be originally taken as being that shown in the Alexander Lawson valuation report. However, an independent valuation of the portfolio transferred should be jointly commissioned by the parties. If this showed that the overall value of the portfolio of properties transferred was greater, the figures would be adjusted. They would be adjusted to credit the Claimant having received from the Partnership value reflecting this higher amount.
- v) The independent valuation mentioned in the preceding paragraph shall be made by an independent valuer agreed upon by the Claimant and the First Defendant or, in default of agreement, selected by the President of the Royal Institute of Chartered Surveyors, on application being made being made by either such party;
- vi) The independent valuer shall act as expert and not as arbitrator and his decision as to valuation shall be final except in the event of manifest error. If the Claimant or the First Defendant alleges manifest error, then that party shall first seek to resolve the matter with the independent valuer and with the other such party. If the matter is not resolved to the satisfaction of the Claimant and the First Defendant within a reasonable time, either such party shall have leave to apply to the court for directions.
- vii) The remainder of the properties held within the partnership estate shall be disposed of at the discretion of the Receiver who shall consult with the



Claimant and the First Defendant in relation to such decision, but his decision as to how best to offer the properties for sale will be final.

- viii) Interim distributions may be made to the parties as properties are sold. The Receiver should be instructed that interim distributions shall be paid with a view to ensuring equity between the Claimant and the First Defendant so that if at any point one party has received or is deemed under the provisions above to have received interim distributions ahead of the other such party (having regard to the Receiver's assessment of the amounts that will be finally due to each of them on the winding up) the Receiver shall seek to remedy this as soon, and as far as, he reasonably thinks practicable when making the next interim distribution.
  - ix) The interim payments and deemed repayments of the Partnership Judgment Debts arising from the matters to be ordered above shall be taken into account in the final accounts on winding-up of the Partnership.
- 79) Unless the Claimant and the First Defendant or their respective counsel write to the court to confirm that they are content that any consequential matters arising from this judgment including costs and any disputes as to the wording of the order have been resolved, or may be resolved on the papers, there should be a short hearing to deal with any such outstanding matters, such hearing to be reserved to me if available.