

**IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
Mr Justice Arnold**

[2009] EWHC 430 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

16/10/2009

Before:

**LORD JUSTICE SEDLEY
LADY JUSTICE ARDEN
and
LORD JUSTICE RIMER**

Between:

JULIENNE ROWLANDS	Appellant
- and -	
PAUL SIMON GRAHAM HODSON	Respondent

**Mr Justin Fenwick QC and Ms Annabel Shaw (instructed by Barlow Lyde & Gilbert LLP) for the
Appellant,
Julienne Rowlands (the Sixth Defendant to the claim)**

Mr Max Mallin (instructed by Morrison & Foerster (UK) LLP) for the Respondent (the Claimant)

Hearing date: 15 June 2009

Lord Justice Rimer :

Introduction

1. This is an appeal by Julienne Rowlands against an order dated 12 March 2009 made by Arnold J. The heart of the order was a declaration that Mrs Rowlands was a partner with Neil Cloutman in a firm of solicitors called Tudor Rose between 1 August 2000 and 31 July 2003. Having so declared, the judge made consequential orders for payment by Mrs Rowlands of various sums totalling just under £245,000 to Paul Hodson, the respondent to her appeal and claimant in the action. The judge also ordered Mrs Rowlands to pay Mr Hodson part of the costs of an earlier action that had been tried by Patten J as well as the costs of the issue before him, assessing the latter at £120,000.
2. The matter before the judge was a preliminary issue arising against the following background. The late Ruby Hodson had two sons: Paul (the respondent) and Mark. Mark is married to Kim,

who owns or controls a company called Hodson (UK) Developments Limited ('Developments'). In 2005 Mrs Hodson started a claim in the Chancery Division to which, by the time of the trial, there were five defendants: Mark, Kim, Developments, Mr Cloutman (a solicitor) and Tudor Rose (his firm). The claim was to set aside certain transactions and for equitable compensation; and, against Mr Cloutman and Tudor Rose, for damages and compensation for professional negligence and breach of fiduciary duty. Mrs Hodson died before the claim was tried but it was continued by her son Paul.

3. The claim was tried by Patten J over five days in October 2006. His judgment of 7 November 2006 found all defendants liable to pay compensation of over £1.5m to the claimant, plus interest and costs. About £900,000 has been recovered towards the judgment but about £1m remains unsatisfied.
4. On 3 October 2008 Master Teverson permitted Mr Hodson to add Mrs Rowlands as the sixth defendant. Mr Hodson wished to enforce the judgment against her on the basis that she was a partner with Mr Cloutman in Tudor Rose from 1 August 2000 to 31 July 2003. Mrs Rowlands disputed that she was such a partner and so Master Teverson directed the trial of a preliminary issue to decide the matter. The only part of Patten J's order that Mr Hodson sought to enforce against Mrs Rowlands was that relating to a transfer on 19 February 2003 of a property known as Farthingdown Combe from the joint names of Ruby and Kim Hodson into the sole name of Kim. Patten J held that Mr Cloutman and Tudor Rose had acted negligently in that transaction.
5. With the judge's permission, Mrs Rowlands has challenged before us his conclusion that she was a partner in Tudor Rose during the relevant period. It is essentially a fact-based appeal and so I must explain the facts. I would, however, first add that whilst the giving of permission to appeal shows a becoming diffidence on the part of the judge, I have respectful doubts as to whether it was appropriate for him to do so rather than to leave it to this court to make its own decision. The case turned on a fact-finding inquiry made against a background of settled law.

The facts: preliminary

6. Mrs Rowlands was admitted as a solicitor in 1972, following which she practised as a sole principal from 1978 until 2000 (in Somerset until 1989, then in Abergavenny) under the name of Julianne D. Rowlands & Co. She began to suffer from ill health and in 2000 she advertised her practice for sale. Mr Cloutman offered to buy it. She had met him in the 1980s, when he was acting as a financial adviser trading under the name of Tudor Rose. He had by 2000 qualified as a solicitor but was not sufficiently qualified to practise on his own without supervision. Mrs Rowlands accepted his offer because he did not require her to continue to work full time in the practice. She agreed to sell him a 99% share of her practice, retaining the other 1% share. She explained in her evidence that the reason for that arrangement was that:

'... it was intended to give me sufficient interest to be able to provide the supervision required by rule 13 of the Solicitors' Practice Rules 1990, given that Mr Cloutman was not sufficiently qualified to practise on his own account.'

The arrangement was formalised by a deed of partnership which Mrs Rowlands and Mr Cloutman executed.

The deed of partnership

7. By that deed, made on 1 August 2000, Mrs Rowlands and Mr Cloutman agreed to practise as solicitors in partnership under the name Julianne D. Rowlands & Co and any other name they agreed (clause 1). The partnership was to endure for three years from 1 August 2000; and on its termination Mrs Rowlands would transfer her 1% interest to Mr Cloutman without charge (clause 2). The partnership business was to be carried on at Henton House, Monk Street, Abergavenny (where Mrs Rowlands had previously practised) and elsewhere the partners might agree, the

premises to be partnership property and the expense relating to them a partnership cost (clause 3). Clause 3 also provided that until the leases were assigned to the partners, Mrs Rowlands was to hold them in trust for the partnership. Profits were to be shared and losses borne in the proportions 99% (Mr Cloutman) and 1% (Mrs Rowlands) (clause 4). The partnership's accounting year was to be from 1 August to 31 July or as the partners should agree. Barclays Bank plc were to be the partnership bankers and either partner was to be entitled to draw cheques on the account (clause 6). Either partner could in various listed circumstances, but only after full discussion at a partners' meeting, give notice terminating the partnership as regards the other partner (clause 7). Each partner was to observe the rules and professional standards of the Law Society, a breach entitling either partner to terminate the partnership (clause 9). Clause 11 imposed a limited time and area restriction on practice by Mrs Rowlands following the termination of the partnership. It also entitled her during the partnership to:

'... retain as her own personal clients independently of the Partnership the clients listed in the Schedule hereto and such other clients as the Partners may agree. For the avoidance of doubt [Mr Cloutman] will have no objection to work carried out by [Mrs Rowlands] with no charge for the clients listed in the Schedule hereto but in respect of work charged and carried out by the Partnership costs shall be divided on such basis as the partners may from time to time agree.'

The schedule listed 28 clients. Mr Cloutman agreed to pay Mrs Rowlands £35,000 for his 99% partnership share (clause 13) (her evidence was that he paid her £45,000). The partners were to retain 100% professional indemnity insurance cover for the term of the partnership (clause 16). Clause 17 imposed eight sub-paragraphs of duties on them, including those of utmost good faith, keeping records of partnership transactions, devoting (save with consent) all of his/her time during normal working hours to the affairs of the partnership and observing the professional standards and requirements of the Law Society.

More facts

8. In her evidence Mrs Rowlands described the arrangement under the deed as 'not a true partnership for the purposes of the Partnership Act 1890, but rather ... an association borne of convenience.' The intention, she said, was that Mr Cloutman would receive the required supervision from her and she would receive the benefit of the indemnity cover for any work she did for the scheduled clients. In about September 2000 Mr Cloutman changed the firm name to Tudor Rose, to which she did not object. The firm notepaper was thereafter headed 'Tudor Rose Solicitors and Financial Planners' and named Mr Cloutman and Mrs Rowlands as the partners.
9. Following the signing of the deed, Mrs Rowlands vacated Henton House. Her involvement in the partnership business was effectively limited to satisfying the Law Society supervision requirement and she assisted Mr Cloutman by answering his queries from time to time. Most of the professional work she continued to do was for family and friends, most of which she did without charge and she even paid the disbursements herself. She did, however, occasionally do work for which a fee was charged, the invoice being rendered on Tudor Rose notepaper. She benefited from the association with Mr Cloutman in two respects: (i) the indemnity cover taken out under clause 16 of the deed; and (ii) the use of the firm's bank account for handling client moneys: as most of her work was conveyancing, she needed access to a bank account complying with the Solicitors' Accounts Rules relating to the handling of client money.
10. The bank account with Barclays was opened in joint names on 1 August 2000. The mandate required the bank to honour cheques and orders signed by either partner. An overdraft facility of £6,500 was agreed (Mrs Rowlands had previously had a £30,000 facility). Barclays rendered bank statements in the names of Mr Cloutman and Mrs Rowlands t/a 'Julienne D. Rowlands & Co and Tudor Rose' down to at least February 2003. In about March 2002, Mr Cloutman unilaterally arranged with Barclays to increase the overdraft and obtain a partnership credit card. Mrs Rowlands complained about this to Barclays, which agreed it had been wrong to accede to Mr Cloutman's requests.

11. The firm's financial statements for each of the years ended 31 July 2001 to 2003 were in the names of 'Neil Cloutman & Julianne Rowlands'. They recorded both as partners. The copies in evidence do not indicate whether they were signed by either partner. Mrs Rowlands' evidence was that she did not sign them but Mr Fenwick QC told us that they were signed by Mr Cloutman. In each year the losses/profits were shown as wholly borne by or payable to Mr Cloutman. The accounts for the years ended 31 July 2001, 2002 and 2003 respectively showed a loss of £5,762 and profits of £39,723 and £90,822. Mrs Rowlands appears to have been relieved by Mr Cloutman from contributing £57.62 to the loss and to have foregone her profit share totalling £1,305.45 for the two latter years. Mr Cloutman thus received the profits of the small amount of work that she did for which the firm charged. None of the accounts showed anything due to Mrs Rowlands on her capital account.
12. Tudor Rose filed partnership tax returns for the years ended 5 April 2001 to 5 April 2003. Mr Cloutman signed the return for the year ended 5 April 2001; the copies in evidence for the other years are apparently unsigned, but I presume Mr Cloutman signed the originals. Each identified the partners as Mr Cloutman and Mrs Rowlands and stated that the partnership had commenced on 1 August 2000. Each attributed all partnership losses or profits to Mr Cloutman. Also in evidence was an unsigned tax return for the year ended 5 April 2004, which covered the accounting period 1 August 2002 to 31 July 2003 and stated that Mrs Rowlands ceased to be a partner on 1 August 2003.
13. Mrs Rowlands' tax return for the year ended 5 April 2001 was in evidence in redacted form and some play was made of the fact that she denied in it that she was in partnership and asserted that she was self-employed. I am not sure what help was thought to be derived from that since the pages in evidence relate exclusively to the accounting period of her practice of Julianne D. Rowlands & Co from 1 August 1999 to 31 July 2000. On the other hand, her personal tax returns (redacted) for subsequent years to that ended 5 April 2004 were also in evidence and at least her return for the year ended 5 April 2002 did deny that she was in partnership.
14. Tudor Rose's accountants filed Accountants' Report forms with the Law Society for each of the two annual reporting periods ended 31 July 2001 and 2002, each describing Mr Cloutman and Mrs Rowlands as 'partners'. The judge pointed out, however, that such reports must include (inter alios) solicitors who were merely held out as partners, for example by being named on the firm's notepaper.
15. Tudor Rose had professional indemnity cover with Zurich Professional. The first policy, for 1 September 2000 to 31 August 2001, was taken out in the name of Julianne D. Rowlands & Co and provided for a nil excess in respect of any claim. The definition of 'the Insured' covered not just partners properly so called but also those held out as partners, employees and anyone else simply working for the firm. The only other policy in evidence was for the period 1 September 2002 to 31 August 2003. That provided for an excess of £1,000 in respect of any one claim, which was not in accordance with clause 16 of the partnership deed.
16. The Solicitors' Regulation Authority provided information to Mr Hodson about the partners in Tudor Rose. It advised him that Mrs Rowlands was a sole practitioner at Tudor Rose from before 1995 until 31 July 2000 (that was inaccurate: she did not practise under the name Tudor Rose prior to the arrangement with Mr Cloutman) and was then a partner until 31 July 2003. It described her as the senior partner from 30 May 2001 to 17 December 2001 and as a partner until 31 July 2003. It described Mr Cloutman as a partner from 1 August 2000 to 17 December 2001 and as the senior partner from 17 December 2001 to 11 May 2005.
17. The date 17 December 2001 is significant. Because of Mrs Rowlands' increasing ill health, she became concerned that she would be unable to fulfil the Law Society's supervision requirements in respect of Mr Cloutman. So he prepared, and she approved, a letter seeking a supervision dispensation from the Law Society, which the judge found was granted on about 17 December 2001. The letter itself was not in evidence. Mrs Rowlands' evidence was that from then on she

was in reality excluded from Tudor Rose. She said there was ‘no need for the theoretical “partnership” between Mr Cloutman and myself to continue, and by virtue of my exclusion and my acceptance of it, it did not continue.’ She said:

‘From then onwards, I regarded my entitlement to be associated with Tudor Rose to be limited to doing such work for family and friends as I could (although due to my health this was, in practice, very little) but I did not regard myself as having actual authority over or involvement in the affairs of Tudor Rose.’

She accepted, however, that she had continued to do a little work after that time, some of which was charged for by Tudor Rose.

18. The only other piece of evidence to which the judge referred was that on 1 December 2006 Mr Hodson’s solicitors spoke to Mrs Rowlands on the telephone, when she confirmed she had left the partnership with Mr Cloutman in 2003.

The judgment of Arnold J

19. The judge dealt separately with (i) the period 1 August 2000 to 17 December 2001 (when the Law Society relaxed the supervision requirement); and (ii) the subsequent period to 31 July 2003.

A. The first period

20. The judge found that the deed of partnership created a partnership between Mrs Rowlands and Mr Cloutman. The three conditions of section 1 of the Partnership Act 1890 were satisfied, namely (i) a business, (ii) carried on by two or more persons in common, (iii) with a view of profit. He said this conclusion was supported by the fact that the purpose of the arrangement was to ensure that Mrs Rowlands could provide the required supervision of Mr Cloutman; and under rule 13 of the Solicitors’ Practice Rules that supervision had to be provided by a partner. There was no suggestion that the partnership deed was a sham or that Mrs Rowlands and Mr Cloutman had merely pretended to comply with rule 13. Mrs Rowlands’ case was, however, that although the parties had intended to comply with rule 13 they had failed. That was because the deed of partnership was not implemented. The reason for that was said to be: (i) there was no profit sharing, (ii) Mrs Rowlands took no benefit from the purported partnership, and (iii) she had no part in its management.
21. The judge rejected each of these points as without substance. As to (i), Mrs Rowlands was entitled to a 1% profit share and if she chose to waive her entitlement to it, that was a matter for her. But an entitlement to share in profits was anyway not a condition of a partnership, as this court had decided in *M. Young Legal Associates Ltd v. Zahid Solicitors (a firm) and Others* [2006] EWCA Civ 613. As to (ii), nor was it a condition of a partnership that a partner should derive a benefit from the putative partnership; although, on the facts, Mrs Rowlands *did* derive a benefit from this partnership – the insurance cover and the use of the bank account, both of which she needed for the ‘private’ work she carried on for her scheduled clients and for the small amount of work she carried on for the partnership. As to (iii), Mrs Rowlands accepted that she discharged her supervisory duties down to 17 December 2001, and she therefore did have a limited involvement in partnership affairs, although such involvement was also not a condition of a partnership (cf the position of a sleeping partner). The judge therefore found that Mrs Rowlands was a partner from 1 August 2000 to 17 December 2001.

B. The second period

22. Mrs Rowlands’ case here was that, following the grant of the supervision dispensation, the partnership was either terminated or varied by conduct (there was no suggestion of a termination or variation by express agreement). The judge rejected this too. Whilst the purpose of the partnership was the provision of supervision, in respect of which there was a change in December

2001, the partnership deed was for a three-year term and it continued in all respects (apart from supervision) as before. I have summarised the respects in which it did so. Following the grant of the Law Society dispensation, there was neither a termination nor a variation of the partnership deed. The judge pointed out that, if the partnership came to an end in December 2001, Mrs Rowlands must have taken up some other status, for example that of a consultant. There was, however, no evidence of any agreement to that effect.

23. A further point canvassed before the judge was that in April 2003 (as Deputy Master Behrens had declared on 5 February 2009) Jenny Okafor (the seventh defendant) became a partner in the firm, which was said to support the case that the partnership with Mrs Rowlands must have terminated earlier. The judge said that, in admitting Ms Okafor as a partner, Mr Cloutman had breached the partnership deed but that did not cause his partnership with Mrs Rowlands to come to an end. In any event, Ms Okafor was only taken on as a partner after the relevant date for the claim against Mrs Rowlands, February 2003.

The appeal

24. Mr Fenwick, leading Ms Shaw for Mrs Rowlands, pointed out that it is no part of Mr Hodson's case against Mrs Rowlands that she was *held out* as a partner and that he had relied upon such holding out. Mr Fenwick accepted that at all material times she did permit herself to be held out as a partner, but absent any relevant reliance that takes Mr Hodson nowhere. The issue before the judge was exclusively whether she was in fact in a partnership with Mr Cloutman at the material time, being the period from April 2002 to February 2003 (that is, following the December 2001 supervision dispensation). The acts for which Patten J found Tudor Rose liable dated only from April 2002.
25. Mr Fenwick accepted that the partnership deed provided the starting point for ascertaining the relationship between Mr Cloutman and Mrs Rowlands, but he emphasised that it did not also provide the finishing point. The correct answer to the issue before the judge turned on the substance of the parties' relationship, not on the 'partnership' label to be found in the deed. He acknowledged that clause 4 of the partnership deed provided for a sharing of profits between Mr Cloutman and Mrs Rowlands (99% and 1%) and asserted that this provision was essential to the claim that there was a true partnership between them. Without it, he said, the remaining provisions of the deed were not sufficient to constitute such a partnership. He accepted also that, had the profits actually been divided in accordance with clause 4 between Mr Cloutman and Mrs Rowlands, there would have been *prima facie* evidence of a partnership (see section 2(3) of the Partnership Act 1890). He conceded that, if they had been so divided, Mrs Rowlands' appeal would have been unarguable.
26. But, said Mr Fenwick, as the judge found, the profits were not so divided. Nor, he said, did Mrs Rowlands even retain a 1% share in the partnership: the evidence was to the effect that Mr Cloutman had 100% of profits and assets from day 1. The judge was, he said, wrong to find that Mrs Rowlands had merely waived her right to her 1% share of the profits. Waiver is a unilateral act. He said the correct inference is that Mrs Rowlands and Mr Cloutman implicitly agreed to a release of her 1% interest in profits and assets and did so from the outset. Mrs Rowlands thereby immediately divested herself of any interest under the deed with the consequence that it did not at any stage reflect the true relationship between the two individuals. Whilst Mrs Rowlands remained associated with the firm, and was admittedly held out as a partner, Mr Fenwick said it was natural that Mr Cloutman would have wanted this in order to ensure the continuity of goodwill over the three-year term.
27. As regards the Solicitors' Practice Rules 1990, Rule 13 is headed 'Supervision and management of a practice'. Rule 13 opens by stating that the words in it that are in italics are defined in the notes. Rule 13(2) provides that:

'Every practice must have at least one *principal* who is a solicitor *qualified to supervise*.'

The notes to rule 13(2) define a 'principal' as meaning (inter alia) 'if the practice is a partnership, a partner in the practice.' The notes further provide that a solicitor is 'qualified to supervise' if he or she:

'(i) has held practising certificates for at least 36 months within the last ten years; and

(ii) has completed the training specified from time to time by the Law Society for the purpose of the rule.'

28. The judge recorded Mrs Rowlands' evidence that the reason for the partnership deed was so that the 1% interest would give her a sufficient interest to be able to provide the supervision required by rule 13, and it is obvious that she regarded the provisions of the deed as qualifying her as a partner for that purpose. Mr Fenwick submitted that in fact the better analysis down to 17 December 2001 was that Mrs Rowlands was only a principal in so far as she was *held out* as a partner. This was because all the other incidents of partnership were lacking, so preventing a true partnership between the solicitors. There had been an implied release of Mrs Rowlands' right to a profit share, which Mr Fenwick said was essential to there being a true partnership relationship, and he referred to section 19 of the Partnership Act 1890 as showing that such a release may be inferred from a course of dealing. The result was, he submitted, that the judge was wrong to find that Mrs Rowlands was in partnership with Mr Cloutman during the first period down to 17 December 2001.
29. As for the second, crucial, period which commenced on about 17 December 2001, if it was not possible before then to infer a release of Mrs Rowlands' profit entitlement, it was certainly legitimate to do so during that period. On about 17 December 2001 the Law Society granted a dispensation from the need for further supervision of Mr Cloutman. Mrs Rowlands and Mr Cloutman had agreed to seek such dispensation, she thereafter ceased to provide it and her role changed accordingly. Even accepting that during the first period the rule 13 obligation had been sufficient to render Mrs Rowlands a partner of Mr Cloutman, that basis for the assertion that there was a partnership between them thereupon evaporated. By 2002, the supervision requirement had gone and the inference was that Mrs Rowlands had relinquished her 1% share in the partnership. The correct analysis was, said Mr Fenwick, that by this second period the (or any) partnership between Mr Cloutman and Mrs Rowlands had been impliedly dissolved. The deed had, by the second period, become an agreement which governed Mr Cloutman's right to hold out Mrs Rowlands as a partner until 31 July 2003; and it also entitled her to work for a limited number of clients with the benefit of the firm's professional indemnity cover, but with any of her work for which Tudor Rose charged being for the sole benefit of Mr Cloutman. The extent of the professional relationship between Mrs Rowlands and Mr Cloutman after 17 December 2001 was, therefore, that (i) she was held out as a partner on the firm notepaper; (ii) she was a signatory on the firm bank account; (iii) she was liable to the bank up to the limit of the firm's £6,500 overdraft facility; (iv) she carried out a little work, some of which was free and some of which was charged for; and (v) she was named as a partner in the firm's tax returns and Law Society accountants' reports. During the second period, however, the three conditions of a partnership to be found in section 1 of the Partnership Act 1890 could not be said to be satisfied.
30. Moreover, said Mr Fenwick, Mr Hodson's claim that Mr Cloutman was in partnership with Ms Okafor from 1 April 2003 (and his obtaining of a declaration from the court to that effect) was inconsistent with his claim that during the period 1 April to 31 July 2003 Mr Cloutman was also in partnership with Mrs Rowlands. It had never been suggested that Mrs Rowlands had agreed to the introduction of Ms Okafor into the partnership, and section 24(7) precludes the introduction of a new partner into the firm without the consent of all existing partners.
31. Mr Max Mallin, for Mr Hodson, submitted that the partnership deed was a contract that had the effect of establishing a true partnership relationship between Mrs Rowlands and Mr Cloutman, a relationship destined to continue between the partners unless and until varied or terminated. The interpretation of the deed was an objective exercise and there is no doubt that, objectively

interpreted, it created a true partnership. There was no suggestion that it was a sham. Mr Mallin accepted that there might be circumstances in which a genuine partnership deed might, in the event, never be acted upon, with the consequence that no partnership would in fact be created. But that was not this case: this partnership deed was acted upon. The judge found that Mrs Rowlands worked for Tudor Rose throughout the three-year term and the firm invoiced for her work and collected the fees. She used the firm's bank account in connection with such work. She received the benefit of its professional indemnity insurance cover. The deed was also the foundation of her ability to act as supervisor to Mr Cloutman; indeed it was precisely so that she could discharge that function that she accepts she entered into partnership with him.

32. The question, said Mr Mallin, is therefore whether the partnership deed gave rise to a partnership within the meaning of section 1 of the Partnership Act 1890 Act, namely a '... relation which subsists between persons carrying on a business in common with a view of profit.' There is no doubt that the firm was carrying on a business. There is no doubt that the two were carrying it on in common, albeit that her contribution was small, as it was intended to be. There is no doubt that it was being carried on 'with a view of profit'. There is no requirement that each partner must receive a share of the profits. Moreover, even though Mrs Rowlands did not receive her 1% share of the profits, she remained entitled to do so and the judge was right to find that she had done no more than waive her right to it. During the accounting period to 31 July 2001, there was in fact a loss of £5,762, to which Mr Cloutman could have asked Mrs Rowlands to contribute £57.62 but he did not (which may not be surprising). The next accounting period ended on 31 July 2002, over seven months after 17 December 2001. Mr Mallin submitted that it could not be inferred that by 17 December 2001 she had released her right to 1% of the profits or that she did so afterwards. She had not claimed her share but there was no evidence of any contractual release of her right. What answer could Mr Cloutman have given if she had claimed her 1% share for the second and/or third years of the partnership?
33. As for the second period, from 17 December 2001, the relationship remained as before save for the change with regard to the need for Mrs Rowlands to provide supervision. There was no evidence of any express variation or termination of the partnership and no conduct from which any such could be inferred.
34. As for the introduction of Ms Okafor to the partnership, Mr Mallin adopted the judge's reasoning as to why it lent no help to Mrs Rowlands.

Discussion and conclusion

35. In my judgment Arnold J was right, for the reasons he gave, to hold that Mrs Rowlands was a partner in Tudor Rose during the period 1 August 2000 to 31 July 2003. The partnership deed undoubtedly purported to create a true partnership between Mr Cloutman and Mrs Rowlands and no-one has suggested that they intended by that deed to do other than create a genuine partnership between them or that it was in any respect a sham. The reason they set out to create a partnership was because they recognised that Mrs Rowlands needed to be in partnership with Mr Cloutman in order to be able to provide supervision in compliance with the Solicitors' Practice Rules 1990.
36. The terms of the deed covered the three requisites of a partnership required by section 1 of the Partnership Act 1890: it provided for the establishment of a business to be carried on by two or more persons in common with a view of profit; and, following its execution, the two of them carried on such a business. It is clear that Mrs Rowlands only carried out a very small proportion of work of her own for the partnership, but that she was likely to do so was reflected in the nominal 1% share in the partnership profits and business that she retained. It was, however, crucial that she was also intended to, and did, play an important role in supervising the practice, without which no business could have been carried on at all.

37. Mr Fenwick conceded that if Mrs Rowlands had received her 1% profit share, her appeal would have been unarguable. That concession appeared to me to be a perhaps slightly surprising one. Section 2(3) of the Partnership Act 1890 provides, so far as material:

‘The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business’

Thus even if Mrs Rowlands had received her 1% profit share, that would not by itself have shown her to be a partner: something more would need to have been shown yet I understood Mr Fenwick to dispute that there was anything more. Moreover this court held in *M. Young Legal Associates Ltd v. Zahid Solicitors (a firm) and Others* [2006] EWCA Civ 613 that the receipt of a share of profits is not a pre-requisite of a claim to be a partner. That case bore a close similarity to this one. It raised the question whether a retired solicitor who was asked to become a partner solely for the purpose of meeting the supervision requirements of the Solicitors’ Practice Rules 1990 became a true partner even though he had no share in partnership business or in its profits (he received a salary in a measure unrelated to the firm’s profits). It was held that he did become a true partner and this court upheld the decision.

38. It was nevertheless central to Mr Fenwick’s argument that the court should infer that, either at the outset or at least at some subsequent imprecise point in Tudor Rose’s history, Mr Cloutman and Mrs Rowlands tacitly agreed that she would release her share in the profits and business to him. For reasons given, I consider that it may perhaps be that, in advancing that argument, Mr Fenwick was tilting at no more than a windmill and that the real question was whether the requirements of section 1 of the Partnership Act 1890 were satisfied. But there was anyway no evidence to support Mr Fenwick’s submission and the judge was in my view entirely right to describe Mrs Rowlands as doing no more than apparently waiving her claim to her small share of the profits earned in the two accounting periods ended 31 July 2002 and 2003. There was no evidence that she ever made a binding agreement to release her right to share in the profits for those years; and, if she did not, she strictly remained entitled to her share. Mr Fenwick sought to deploy Mrs Rowlands’ non-receipt of her share as providing an evidential foundation for the proposition that there was at some point an implied dissolution of the partnership. Quite apart from the strictly peripheral role that Mrs Rowlands’ profit share plays in the case, the proposition was in my view evidentially unsustainable.
39. This is in my view a straightforward case. The parties set out with the intention of being true partners, as the partnership deed provided. They so intended because supervision by an appropriately qualified partner was what the Solicitors’ Practice Rules 1990 required. Despite the undoubtedly modest contribution to the partnership affairs that Mrs Rowlands made (although it was probably no more modest than was made by the putative partner in the *M. Young Legal Associates* case), they thereafter acted as partners throughout its term. Mrs Rowlands did not collect her small share of the profits in the second and third years, but there is no justification for the assertion that she released her right to it; and she also stopped providing supervision on about 17 December 2001 following the Law Society dispensation. Otherwise she carried on throughout the three-year term as she had started, doing occasional work for the firm for which it charged, using its bank account, assuming a liability for the firm’s overdraft, taking the benefit of the firm’s insurance cover, being throughout described on its notepaper and elsewhere as a partner and continuing to be bound by the terms of the partnership deed. I can see no basis on which it can fairly be said that the partnership deed did not continue to govern their relationship. The parties undoubtedly started out as true partners, they never agreed to vary that relationship and the evidence proved sufficiently that throughout the three-year term they continued to carry on the business in common for profit even if Mrs Rowlands’ contribution was small. Despite his submission that at some imprecise point the partnership had been impliedly dissolved, Mr Fenwick conceded that the restraint on competition imposed on Mrs Rowlands by clause 11 of the deed (expressed to run ‘for a period of one year from the termination of the Partnership’) would not start to run until 1 August 2003. How was that reconcilable with the submission that

the partnership had impliedly terminated earlier? In my judgment Mrs Rowlands started out on 1 August 2000 as a true partner and remained such until 31 July 2003.

40. I also add this. The only real change that happened in the firm's history was the dispensation in December 2001 of the need for Mrs Rowlands to provide further supervision. That dispensation could not by itself have operated to dissolve the partnership. That could only have been achieved by an agreement to that effect by the two partners, but there was none. If, for example, a partner, whether because of wilfulness, idleness or illness, ceases to attend the partnership office and to carry out any of the partnership business, he will not automatically cease to be a partner, any more than an employee who stops performing his duties because of illness will cease to be an employee. Partnership is a contractual relationship carrying with it both benefits and burdens, including a responsibility jointly and severally for the firm's liabilities. The partnership deed or agreement (if, as here, there is one) will usually provide bases on which a partnership relationship can be terminated; and clauses 7 and 9 of the partnership deed did provide such bases. None was invoked in this case and there was no evidence of any express or implied dissolution of the partnership. Even if it might be said that after December 2001 Mrs Rowlands' continued activity in the partnership was no more than nominal, there is still no basis for an assertion that she ceased to be a partner at any point earlier than 31 July 2003.

41. I would dismiss the appeal.

Lady Justice Arden :

42. I agree.

Lord Justice Sedley :

43. I also agree.