

Constructive dismissal inapplicable to multi-party LLP agreements

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The High Court has made a significant decision which will prevent exiting members of an LLP from avoiding restrictive

covenants by alleging they had resigned in response to the employer's breach of contract.

Mr Flanagan was a member of Liontrust Investment Partners LLP. His membership was governed by a members agreement to which he was party. The law provides that where people are members of an LLP and a members agreement does not subsist default provisions under the Limited Liability Partnership Act apply. Liontrust took the decision to close the fund that Mr Flanagan was managing, thereby putting him on notice of compulsory retirement and on garden leave; however, they did not do so in accordance with the provisions of the members agreement which amongst other things required the approval of a properly constituted meeting of the Management Committee for a member to be put on garden leave. No such approval was obtained. Mr Flanagan sought to argue that the firm's conduct amounted to a breach of the LLP Agreement sufficiently serious to demonstrate an intention by the LLP not to be bound by the members agreement, which, if the principle of repudiatory breach which applies to employment contracts applied here, would mean Mr Flanagan could say that the members agreement was terminated and instead Mr Flanagan could rely on the default legislative provisions entitling him to an equal share in the LLP's capital, even though he was not entitled to any equity interest under the original agreement.

The High Court reached the decision that the doctrine of repudiatory breach could not apply to LLP agreements, as its application could result in members in the same LLP being bound by different arrangements with some members being bound by the members agreement whilst others would be covered by the default provisions under the LLP Act. The Court did leave open the possibility of the doctrine being applicable to LLPs with two members.

This important decision will significantly reduce the leverage available to disgruntled LLP members seeking to negotiate a favourable exit as it means there is no equivalent of

constructive dismissal available to them. The fate of LLPs with only two members has yet to be decided in this respect.

Flanagan v Liontrust Investment Partners LLP and others [2015] EWHC 2171

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