

Mrs Swarandee Birdi v Specsavers Optical Group and others

What will the Court of Appeal be looking at?

On 30th October 2015, **Mr Justice Nugee granted Ms Birdi leave to appeal his judgment to the Court of Appeal** on the following six grounds:

1. That the Judge failed to address Ms Birdi's primary argument in relation to Issue 2 that Specsavers' UK subsidiary (SOS) had no legal right to charge the Dartford store anything at all for its "emergency management cover" in the circumstances where there had been no negotiation, let alone contract between SOS and the Dartford Store for this management cover. On this basis the whole £86,000 falls to be returned to the Dartford store and not just the £8,400 charges which Mr Justice Nugee found to be excessive.
2. That the Judge's conclusion that Specsavers exercised a legitimate power of management as an A Director in increasing staff salary and bonuses to extraordinary levels and levying management charges was wrong in law because:
 - (i) under the terms of the joint-venture Specsavers was never entitled to hold the A shares acquired from Mr Patel;
 - (ii) the ruling that Specsavers was the holder of the A shares (and therefore an A Director), notwithstanding that its name had not been entered into the register of members, was wrong as a matter of law;
 - (iii) the Judge's finding that Specsavers was an A shareholder and A Director was inherently inconsistent with the judge's finding that Specsavers was entitled to charge a fee for services of management given that day to day management was the responsibility of all A shareholders anyway and which they cannot charge the company for ordinarily.
3. The conclusion that Ms Birdi's service contract as an employee entitled the store company to suspend her from her powers as a director is wrong in law.
4. That in finding that Specsavers and Mr Singh were paying Mr Singh extra remuneration to preclude Ms Birdi from claiming that she was entitled to equal distribution, the Judge wholly failed to deal with the meaning and effect of the maximum distribution policy on that finding.

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