

Miah v Khan [2000] 1 WLR 2163

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Facts

- Five persons agreed to open a new restaurant:
 - One was a head waiter;
 - the 2nd was a chef in an Indian restaurant;
 - the 3rd was a chef from another restaurant who provided capital.
 - The 4th person was to be an employee;
 - the 5th person provided expertise as a sleeping partner.
- 50% of the profits were to be shared by the first three persons and the remaining 50% was to be received by the 5th partner.
- Before the new restaurant opened, a disagreement arose between the partners after money had been spent on fitting out the new restaurant.
- These monies had been supplied by one of the partners and deposited in a partnership bank account that was only used for business purposes.
- The question arose how the assets were to be distributed between the partners if there was a partnership.

Issues

- Had the partners ever carried on a business?

Held

- The House of Lords allowed the appeal.
- Millet J found that there was a partnership as it was possible to carry on a business even though it had not yet opened its doors for trading.

Quotes

"The question in the present case is not whether the parties "had so far advanced towards the establishment of a restaurant as properly to be described as having entered upon the trade of running a restaurant," for it does not matter how the enterprise should properly be described. The question is whether they had actually embarked upon the venture on which they had agreed. The mutual rights and obligations of the parties do not depend on whether their relationship broke up the day before or the day after they opened the restaurant, but on whether it broke up before or after they actually transacted any business of the joint venture. The question is not whether the restaurant had commenced trading, but whether the parties had done enough to be found to have commenced the joint enterprise in which they had agreed to engage. Once the judge found that the assets had been acquired, the liabilities incurred

and the expenditure laid out in the course of the joint venture and with the authority of all parties, the conclusion inevitably followed."

Full Text

The full text is available here:

<https://publications.parliament.uk/pa/ld199900/ldjudgmt/jd001102/miah.htm>

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