

serle court in 2007.

IN 2007 SERLE COURT'S CASES CONTINUED TO SHOWCASE ITS "STAGGERINGLY FINE COMMERCIAL ABILITY" AND "MARVELLOUS BUSINESS-LIKE APPROACH" (CHAMBERS & PARTNERS 2007). MEMBERS WERE AGAIN INSTRUCTED ACROSS A BROAD SPECTRUM OF CASES FROM THE HIGH PROFILE TO THE DECIDEDLY UNUSUAL.

we were instructed in a large number of high profile cases, particularly in the fields of fraud and trusts, including:

Philip Jones QC, Justin Higgs and Jennifer Haywood are acting for the Claimants in the ongoing *Fiona v Privalov litigation*, a \$500m fraud claim arising out of several shipping transactions. The case has already resulted in a significant House of Lords decision. In October 2007, the House of Lords decided that court proceedings relating to the rescission of a charterparty containing an arbitration clause should be stayed pending determination of that issue by the arbitrator (*Fiona Trust & Holding Corp v Privalov & Ors* [2007] UKHL 40). The other issues in the case, and the damages claims against non-charterers arising out of the charters, are proceeding to trial in 2008. Other legal issues to be decided include what law is properly applicable to the claims, the extent of a shipbroker's obligations to a client and whether defendants who were not parties to the relevant transactions but assisted are liable to account for the profits made by the defendant parties to the transactions.

Dominic Dowley QC and Andrew Moran are acting for the Claimants in similar litigation involving Novorossiysk Shipping Company, a \$200m fraud claim arising out of several shipping transactions. Again, the case raises issues of proper law, the extent of shipbrokers' obligations, and the availability of remedies against those who are alleged to have assisted or participated in the frauds.

Philip Marshall QC acted for Rabobank in the major banking fraud case of *Natwest v Rabobank* which arose out of the collapse of the FTSE listed Yorkshire Food Group. The counterclaims made by Rabobank raised important issues regarding the nature of the obligations between a syndicate of banks when their loans go into default or "work out" and the manner in which implied misrepresentations can arise. The case is presently on its way to the Court of Appeal for hearing in October 2008.

Marlwood Commercial & Ors v Kozeny & Ors [2007] EWHC 950 (Comm): The Commercial Court extended two world-wide Freezing Orders to cover assets, in which the Defendant claimed he had no interest and which were apparently held on trust for his mother, on the basis that there was good reason to suppose (on the affidavit evidence) that the Defendant maintained substantive control of the assets. Dominic Dowley QC leading Andrew Bruce for the Claimants.

Frank Hinks QC with Jonathan Adkin appeared in *Brown v The Executors of HM the Queen Mother and HRH Princess Margaret* before the President of the Family Division and CA resisting the claim of a Jersey Accountant (who claims to be the illegitimate son of HRHQM) to unseal the wills of HMQM and HRHQM.

Charman v Charman [2007] 1 FLR 1246 concerned an appeal from the High Court in ancillary relief proceedings, a central issue in which was the treatment by the court of a substantial Bermuda trust. The trust was a discretionary settlement as to capital and the husband, who had a life interest in income, was a named beneficiary; there had never been distributions of capital. A Court of Appeal of three family judges upheld the decision of the Family Division that 100% of the capital of the trust was the husband's 'resource'. The case raises questions as to whether there are parallel systems of trust law operating between the Chancery Division and the Family Division. Alan Boyle QC and Dakis Hagen (together with family counsel) appeared for the husband.

Philip Marshall QC and Ruth Holtham were instructed by DLA Piper in substantial proceedings arising out of the collapse of Lexi Holdings plc, an unregulated provider of bridging loan finance. The administrators of Lexi obtained judgment for £75m against the company's managing director,

Shaid Luqman, who in the course of proceedings was committed to prison for the maximum term following his serial breach of court orders. Several other notable judgments were obtained including from Briggs J on 16 November 2007 that complete omission to act constitutes a breach of director's duties. The proceedings are ongoing.

The gargantuan Alhamrani family trusts litigation continues before the Jersey Courts, with Douglas Close, Giles Richardson and Dakis Hagen instructed on behalf of the corporate trustee. Amongst numerous interlocutory applications in 2007, two of particular importance concerned the existence of so-called "dog-leg" claims ([2007] JRC 026) and a trustee's right to indemnification from the fund in respect of legal costs incurred in non-hostile litigation ([2007] JCA 198). In the former, the Royal Court upheld orthodoxy in determining that directors of trust companies cannot ordinarily be sued by beneficiaries for breaches of duty owed to those companies. And in the latter, the Court of Appeal recognised the trustee's right to full indemnification, something of which English law, in the CPR, appears to have lost sight.

In *Re Bechal, Blackman v Man* [2007] (Sir Donald Rattee), a testamentary capacity case, an elderly widow left virtually her whole estate (£10m+) to restaurateurs who were tenants of her and her deceased's husband's property company. It was held that the will was valid despite medical evidence of Alzheimers. Will Henderson acted for HM Attorney General who claimed 7/9ths of the estate for charity in the event that the wills in issue were invalid.

David Drake and Hugh Norbury continue to act for the Secretary of State for Health and all of England's Strategic Health Authorities in their long-running litigation against generic drug companies alleged to have rigged the prices of antibiotics, blood-thinners and anti-ulcer drugs to the NHS. *Secretary of State for Health v Norton Healthcare Ltd* 2007 saw a successful settlement with another of the Defendants, bringing recoveries for the NHS to over £30m.

In 2007 the Office of Fair Trading and the UK's eight largest banks commenced a test case with a view to resolving the controversy as to the legality of charges on personal current accounts. David Blayney, instructed by Linklaters, acts for The Royal Bank of Scotland plc, which presented the lead submissions for the banks at the trial of preliminary issues in January 2008.

(Covenants) Act 1995 where there is an outstanding rent review. Chris Stoner acted for the Respondent, Scottish & Newcastle plc. The matter is due to be heard by the House of Lords in July 2008.

In *Roberts v Swangrove Estates & Ors* [2007] 2 P & CR 17 the Crown Estate Commissioners, represented by Tom Braithwaite, successfully established title to many thousand acres of mud flats in the River Severn before Lindsay J against the claims of the self-styled Lord Marcher of Trelleck. Unusually, in order to avoid historical arguments based upon medieval Welsh law and the conquest of Wales in the thirteenth century, they did so by claiming adverse possession rather than relying on the Crown's original title. Later in the year, Frank Hinks QC appeared with Tom in the Court of Appeal in *Roberts v Crown Estate Commissioners* [2008] EWCA Civ 98, in which the Crown's constitutional ability to acquire title by adverse possession was upheld. Frank and Tom return to court in 2008 to do battle over the coast of Pembrokeshire.

and we continued to undertake work across all of our other major practice areas including some decidedly unusual cases:

John Machell (instructed by Denton Wilde Sapte) acted for Harry Handelsman and Manhattan Loft Corporation against John Hitchcox in a joint venture dispute relating to the redevelopment of St Pancras. The case settled shortly before trial in October 2007.

In *Re G* [2007] EWHC 1861, 2007 WL 2186925 (CP), [2007] 2 P & CR DG 21 (Morgan J) Will Henderson appeared in a rare Court of Protection case of applications for lifetime gifts and statutory wills being decided by a High Court Judge involving the consideration and application of the 'sane interval' test.

In the Isle of Man, Nicholas Harrison was instructed by Dickinson Cruickshank on *BITEL v Kyrgyz Mobil Tel Ltd & Ors*, a dispute between two Russian groups concerning a major fraud involving the shares in Kyrgyzstan's leading mobile telephone company. The litigation has centered on a counterclaim brought by Nicholas's clients (three Isle of Man companies) against fourteen defendants in various jurisdictions. It has involved numerous interlocutory disputes, including freezing injunctions, disclosure orders and a highly complex jurisdiction challenge, which will be the subject of an appeal in 2008. There is an ongoing associated arbitration and there have also been related proceedings in England, the BVI and Kyrgyzstan.

Jonathan Adkin was instructed by Halliwells in *Norwich Union v John and Anne Darwin* (the "missing canoeist" case) on behalf of the insurers.

Nicholas Lavender appeared in the 69-day Commercial Court trial of *JP Morgan Chase Bank v Springwell*, acting as the senior junior in Springwell's team of counsel. The case concerned allegations of mis-selling on the part of the bank in relation to a US\$600m investment portfolio of emerging market, and particularly Russian, debt. Judgment is awaited.

Hugh Norbury was led by Tom Beazley QC (Blackstone Chambers) instructed by Mishcon de Reya in *Pfizer v Jalal* in which Pfizer obtained summary judgment in respect of bribes accepted by Jalal (a Pfizer employee) to allow abuse of a price rebate scheme.

James Behrens acted in *Statak Corporation v Alford* [2008] EWHC 32 (Ch), [2008] BCC 266, a \$8m claim for dishonest assistance in a breach of trust dating back to the 1980s and raising issues of limitation.

Following the tax changes made by the Finance Act 2006, John Machell has advised extensively in connection with the creation of private wealth management products using limited partnerships and LLPs in place of traditional trusts.

Will Henderson represented the Museum in *Tasmanian Aboriginal Centre v Natural History Museum* a claim by Tasmanian aborigines to ownership/possession of bones of long dead Tasmanian aborigines held by the Museum. The claim was settled.

Whilst in *Re Kostic, Kostic v Chaplin* [2007] EWHC 2298 (Ch), (2007-08) 10 I.T.E.L.R. 364, 2007 WL 2944829 (Henderson J) Will Henderson acted for the testator's son where a will leaving the whole estate (c.£8m before IHT) to the Conservative Party Association was held invalid by reason of testator's insane delusions. In *Re Kostic, Kostic v Chaplin* [2007] EWHC 2909 (Ch) 2007 WL 4266180 (Henderson J) there was detailed analysis as to the principles applicable to the award of cost in contentious probate proceedings.

In *Re Jaiswal* – Jersey Court of Appeal - Unreported – Jersey Legal Board June 2007 Clare Hoffmann acted on behalf of the youngest son of the deceased scion of an Indian drinks conglomerate in a dispute as to the proper forum for the determination of the validity of a will. Although all the assets to be administered were sited in Jersey the Jersey Court of Appeal held that India, being the deceased's domicile, was the proper forum to determine whether the wills were valid and probate ought to be granted.

Ruth Jordan appeared for the Revenue in *Smith v Commissioners for Her Majesty's Revenue and Customs* [2007] BTC 8010; [2007] STI 2560; (2007) 157 NLJ 1506. The appeal turned on whether answers to an insurer's medical questionnaire amounted to "full medical evidence" of the assured's health for the purposes of determining, under the Revenue's Statement of Practice E4, whether the issue of life assurance policies and the purchase of annuities were "associated operations" within the Inheritance Tax Act 1984 section 263.

Andrew Francis appeared for the Christie Estate in *Coastal Partnerships Ltd v Beddy & Ors* [2007] EWHC 387 (Ch). This was a dispute concerning the meaning of freehold restrictive covenants at Saunton Sands, North Devon. The case determined the meaning of the words "one single house" as applied to a new building and whether the management and letting of the proposed building (to be used for holiday flats) broke a restriction that no trade or business was to be carried out on the burdened land.

In *Expandable & Prime v Rubin*, Daniel Lightman appeared on an application raising important issues about the extent of a party's entitlement to disclosure of documents under CPR Part 31.14. The decision of Registrar Simmonds in spring 2007

our property work in 2007 included three cases on important points of law:

Andrew Francis appeared for the successful defendants in the High Court, Chancery Division, in *RHJ Ltd v FT Patten (Holdings) Ltd & Anor*. [2007] EWHC 1655 (Ch) (Lewison J). In this rights of light case concerning a large development site in central Liverpool, the Court decided that a term in a lease could be a "consent" within section 3 Prescription Act 1832 without expressly referring to light. Therefore, no easement of light could be acquired by the claimant's building by prescription. This outcome meant that the claimant's claim to a right of light over the defendants' development site was defeated, leaving the defendants free to build. (The judgment of Lewison J was subsequently upheld by the Court of Appeal in March 2008, Andrew Francis representing the same parties; 2008 EWCA Civ 151).

In *Scottish & Newcastle plc v Raguz* [2007] 2 All ER 871 CA the Court of Appeal upheld the decision of Hart J confirming the ambit of section 24 of the Land Registration Act 1925 and the manner in which notices are to be served pursuant to section 17 of the Landlord & Tenant



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was the subject of an appeal to Patten J in July 2007 (reported at [2007] All ER (D) 363 (Jul)) and a further appeal to the Court of Appeal in January 2008: in the important judgment of Rix LJ. (reported in The Times, 10 March 2008) the Court of Appeal for the first time examined and clarified this significant CPR rule.

Following the determination in 2007 by the Grand Court of the Cayman Islands of a preliminary issue in favour of the Estate of Anders Jahre, Justin Higgs will now represent the Estate at the trial in October 2008 of the Estate's substantial claims (\$250m) against thirteen defendants that its assets were dishonestly misappropriated.

David Drake appeared for Network Rail in the Technology & Construction Court, in two test cases concerning Network Rail's ability to recover as economic loss the adverse impact on its financial interests under Track Access Agreements of disruption flowing from safety restrictions consequent on damage to rail bridges caused by negligently-driven HGVs.

In *Precision Development Ltd and anr v Jeanette Caribbean Co Ltd* in the Supreme Court and Court of Appeal, Turks & Caicos Islands, James Corbett QC appeared in this litigation over development rights in respect of the last remaining substantial plot of land at Grace Bay, Providenciales.

In *JD Wetherspoon plc v Braun & Ors* Clare Hoffmann is acting on behalf of a

director of a property finding agent who is alleged to have owed dog-leg duties directly to JD Wetherspoons. Limitation issues include whether a fiduciary's duty to account is a personal or proprietary remedy and consequently whether the duty to account engages section 32(1)(a) of the Limitation Act 1980.

Daniel Lightman has been called to the Cayman Bar to appear for the claimant in *Tritton Developments v Fortis Bank (Cayman) & Ors*, a US\$200m claim against its former professional directors and financial consultants for negligence, breach of contract and breach of fiduciary duty, the 3-week trial of which is due to take place in the Cayman Islands in November 2008.

Our alternative dispute resolution work has continued to thrive with the addition of three new panel members to our already sizeable number of experienced and eminent mediators and arbitrators. They continue to provide a domestic and international service across a broad spectrum of disputes, including all major commercial and chancery areas, for example, company, property, trusts and probate, professional negligence and banking and financial services. Beverly-Ann Rogers and Elizabeth Jones QC are both highly recommended for mediation in *Chambers & Partners* and *The Legal 500* and with two other of our mediators are in the most experienced band in the Bar Council list of barrister mediators.

and finally...

The directories have continued to acknowledge our ability in 2007. In *Chambers & Partners* we are now recommended as a set in 12 practice areas, making us the most recommended Chancery/Commercial set; only 3 other sets are recommended in more practice areas. In addition we have 90 individual recommendations, giving us the 4th most recommendations per member in the country. Whilst in *The Legal 500*, we are recommended as a set in 9 practice areas and have 78 individual recommendations.

Our achievements continue to be recognised in various awards. We were

highly commended in the authoritative Financial Times Innovative Lawyers Survey, nominated in 4 categories in the *Chambers & Partners* Bar Awards at which Douglas Close won Chancery Junior of the Year and we were short listed in the British Legal Awards.

In 2007 we were delighted to welcome Sir Jonathan Parker, Sir Gavin Lightman and Paul Johnson to our ADR panel and James Mather and Robin Rathmell as new tenants. Early in 2008 the new QC appointments were announced and Peter McMaster, Nicholas Lavender and David Casement were all successful in their applications for silk.