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## serle court

in its Master Custody Agreement and Standard Terms of Business. Among other things, the case determined important issues concerning the application of the Financial Collateral Arrangements (No.2) Regulations 2003.

Richard Walford is acting for French and UAE clients in a Commercial Court dispute over success fees in respect of a US \$1bn property development in St Petersburg.

Dominic Dowley QC is involved in a banking arbitration in Abu Dhabi under the Rules of the Abu Dhabi Commercial Conciliation and Arbitration Centre arising out of the property price collapse in Abu Dhabi.

Jonathan Harris acted for the Central Bank of Italy in *Ivan Murray-Smith v Banca d'Italia*, in which he successfully

challenged the jurisdiction of the English courts to determine the liability of the Bank in respect of the withdrawal of the facility to exchange Lire currency.

David Drake appeared in *Overy v PayPal (Europe) Ltd*. In a significant decision on the ambit of consumer protection legislation in a commercial context, the Mercantile court in Manchester held that it was fatal to a litigant's ability to invoke the protections of the Unfair Terms in Consumer Contracts Regulations 1999 if the litigant contracted to any significant degree for purposes of business (rather than personal consumption).

Richard Walford has been instructed in ongoing ICC Arbitrations involving satellite imaging over Serbia, and involving Plant Breeders' Rights to new varieties of grapes.

### ...and we continue to be involved in cases covering many other of our broad Commercial Chancery practice areas including Intellectual Property, LLPs and Partnership, Property and Sport.

John Machell QC and Adil Mohamedbhai are instructed to act for an interested party in relation to an application for permission to appeal to the Supreme Court in *Bates van Winkelhof v Clyde & Co LLP* [2012] EWCA Civ 1207, which concerns the construction of section 4(4) of the Limited Liability Partnerships Act 2000 and the reach of the whistleblowing provisions in the Employment Rights Act 1996.

Chris Stoner QC was involved in many selection issues prior to the Olympic and Paralympic Games, including acting for British Swimming in contested hearings in the cases of David Roberts, Tonia Couch and Molly Renshaw.

Michael Edenborough QC appeared in Case C-307/10 *CIPA v Registrar of Trade Marks (IP TRANSLATOR)* [2012] ETMR 42, which was heard by the Grand Chamber (13 judges) of the Court of Justice, with 12 interveners. The case was concerned with how trade mark specifications should be construed.

John Machell QC and Dan McCourt Fritz appeared in *Wah v Grant Thornton International Ltd* [2012] EWHC 3198 (Ch) on an application under section 67 of the Arbitration Act 1996 in relation to the enforceability of ADR provisions in an international firm governing document.

Chris Stoner QC represented the Port of London Authority before H M Land Adjudicator in a preliminary issue as to whether it could establish paper title to a part of the River Thames opposite Kew Gardens.

Michael Edenborough QC and Gareth Tilley appeared for the successful claimants in *Temple Island Collections v New English Teas* [2012] EWPCC 1 (the *Red Bus* case). This is the latest decision on how the copyright in a digitally manipulated photograph

may be enforced.

Chris Stoner QC acted for the tenants in a representative action, in their successful appeal on the application of consultation requirements in respect of service charge payments, in the case of *Phillips v Francis*.

Michael Edenborough QC and Thomas Elias appeared in the Court of Justice in Case-311/11 P *Smart Technologies v OHIM* [2012] ETMR 49 concerning the registrability of slogans as Community Trade Marks.

David Drake appeared in *Secretary of State for Health v Servier Laboratories Ltd* [2012] EWHC 2761 (Ch), in which a French drug company sought to rely on a French statute criminalizing provision of information for the purposes of foreign proceedings as a reason why it should not be ordered to particularize its own pleaded case to an adequate standard. The argument – one of far-reaching effect in the context of French litigants in English courts – was rejected; an appeal is pending.

Thomas Elias appeared before the Trade Marks Registry (Appointed Person) in *Pass J Holdings Ltd v Spencer* [2012] RPC 16, and succeeded in having a decision remitted back to the Registry where the original decision contained manifest errors, which had plainly been cut-and-pasted from an earlier decision. The client also received an *ex gratia* payment from the Registry on account of his costs.

And, finally, Jonathan Harris gave expert evidence in the courts of Athens in the highly publicised *Coward v Ambrosiadou* divorce litigation (the background concerns two mathematics geniuses who married and made a fortune by setting up a company investing in the stock markets using mathematical formulae).

# serle court in 2012



**2012 has been another very busy year for Serle Court and I'm delighted to be able to share some of the highlights with you. The cases below show the extraordinary variety of work that Serle Court undertakes. The cases include very high profile cases with appearances in the Supreme Court, cases in our major practice areas including trusts and fraud and a number in more specialist areas. I hope you find the review both enjoyable and interesting.**

Alan Boyle QC Head of Chambers

### We have been involved in a large number of high profile cases in 2012 and a number went to the Court of Appeal, Supreme Court and Privy Council.

Philip Jones QC and Daniel Lightman appeared for the successful appellants in the Supreme Court in *Perry v SOCA* [2012] UKSC 35. A nine-judge panel held that a civil recovery order under Part 5 of POCA in relation to property obtained through criminal conduct could only be made by the High Court in respect of property inside England and Wales. The court therefore had no jurisdiction to make a worldwide property freezing order in support of Part 5 civil recovery proceedings.

Philip Marshall QC, Philip Jones QC, Ruth den Besten and Matthew Morrison continue to act for JSC BTA Bank in connection with certain of its Commercial Court proceedings brought against the Bank's former chairman, Mukhtar Ablyazov, and others following the perpetration of fraudulent schemes to misappropriate money from the Bank. Hugh Norbury QC acts for Mr Zharimbetov, the Bank's deputy chairman and a defendant in two of the proceedings. The Bank has now obtained judgment in excess of £1bn against Mr Ablyazov. A trial of three further claims commenced in November 2012.

Jonathan Adkin successfully acted as advocate for the family of Badri Patarkatsishvili throughout the high profile trial before Gloster J of *Berezovsky v Abramovich*, one of the most valuable cases ever to come before the English Courts and the subject of much national and international media coverage.

Conor Quigley QC appeared in *Wilkinson & Fitzgerald v Churchill* [2012] EWCA Civ 1166. The Court of Appeal held that in order to allow section 151(8) of the Road Traffic Act 1988 to be interpreted in accordance with EU motor insurance Directives, it was necessary to add certain words to that provision.

Michael Edenborough QC appeared on behalf of AIPPI, an international IP organisation, which intervened in the Supreme Court case of *R (otao Prudential) v HMRC*. The case

concerned the scope of legal advice privilege at common law and whether this extends to tax accountants giving tax advice. Judgment was handed down in January 2013.

Jonathan Adkin appeared in *Williams v Central Bank of Nigeria* [2012] EWCA Civ 415, a landmark decision of the Court of Appeal about the limitation period for claims in dishonest assistance and unconscionable receipt where there is a fraudulent breach of trust. Jonathan acted for the successful respondent. The case will be heard in the Supreme Court in 2013.

Dominic Dowley QC and Justin Higgs continue to be instructed in the forthcoming appeals in *Fiona Trust & Holding Corporation v Nikitin, Standard Maritime & Ors*, which will be heard by the Court of Appeal in March 2013.

The *Broughton v Hicks & Ors* case concerned allegations by the former owners of Liverpool FC of breach of duty by Sir Martin Broughton and other directors in connection with the sale of the club. Philip Marshall QC acted for Sir Martin Broughton and the other directors.

Ruth Jordan appeared in the Privy Council for the appellant in *Oceania Heights v Willard Clarke Enterprises*, a case on appeal from the Bahamas on the question of whether title to property passed under an agreement entered into in breach of a statutory prohibition on property transfers.

David Blayney acted for the successful appellant in *Brightsea UK Ltd v Drachs Investments No.3 Ltd* [2003] EWCA Civ 516. The Court of Appeal overturned the decision by the trial judge that the seller of a group of companies was entitled, under the terms of a tax deed, to change the allocation of liability to tax by requiring the purchaser to facilitate surrenders of group relief.

Chris Stoner QC represented the Canal & River Trust before the Court of Appeal on the issue of the extent of riparian rights.

## Our private client work, including trusts and charities, continues to go from strength to strength with members instructed at home and in many overseas jurisdictions including Bermuda, Grand Cayman, Hong Kong and Jersey.

William Henderson appeared for HMRC in *Helena Partnerships Limited v HMRC* [2012] EWCA Civ 569. The Court of Appeal held that the provision of housing accommodation, otherwise than for those in some relevant charitable need, was not a charitable purpose within the spirit and intent of the preamble to the Charitable Uses Act 1601.

Alan Boyle QC and John Machell QC acted for the Plaintiffs in *AB Jnr v MB* in the Grand Court of the Cayman Islands. The Chief Justice's judgment is a landmark decision on the fair dealing rule and the availability of equitable compensation as a remedy for breach of trust.

Frank Hinks QC and Paul Adams acted for the claimants in *C v D*, a claim to have a structure comprising a Bermuda trust and a civil law foundation declared invalid after over 50 years. The proceedings were eventually settled as between the beneficiaries, trustees and foundation, raising interesting issues both as to how a trust dispute can be settled notwithstanding the possibility that non-parties might potentially have claims on the assets and how to bind the foundation when it was disputing the jurisdiction of the Bermuda Court.

Dakis Hagen and Paul Adams acted in *Re the F Trust*, a breach of trust claim raising issues of South African, Swiss and Jersey law. The case settled shortly prior to trial and the settlement was approved by the Royal Court of Jersey [2012] JRC 201. Dakis acted for the claimant and Paul acted for the trustee.

In the Bermuda case of *Re Q*, Frank Hinks QC, Jonathan Adkin and James Mather acted for the applicant who was successful in obtaining an anti-suit injunction preventing a disaffected beneficiary from taking proceedings in another jurisdiction relating to a Bermuda trust.

In an unusual application, reported as *Re X Trust* [2012] JRC 171, beneficiaries obtained Beddoe-type relief allowing them funding from a trust to sue its then incumbent trustee. Alan Boyle QC and Dakis Hagen advise the defendant corporate trustee. Giles Richardson and Robin Rathmell advise a co-defendant in the underlying litigation.

Justin Higgo is instructed by the claimant in *Labrouche v Frey*, a claim for an account and for breach of trust against the former trustees of a will trust including in relation to the conversion of the founder's rights in a Liechtenstein Anstalt.

*Trilogy Management Limited v YT Charitable Foundation International Limited* is a long-running trust dispute. In the past year, the Royal Court of Jersey ([2012] JRC 093) and the

Jersey Court of Appeal ([2012] JCA 152) handed down judgments relating to the first stage of the proceedings (concerning the interpretation of the underlying company's Articles of Association). There have also been ancillary proceedings relating to the application for an interested party to intervene: *A v B Management Limited* (2011) 14 ITEL 233. Robin Rathmell is instructed on behalf of the principal trustee. William Henderson is instructed on behalf of an interested party.

William Henderson appeared for HM Attorney General in *Attorney General v Charity Commission for England and Wales* [2012] WTLR 977. The Upper Tribunal (Tax and Chancery) held that charities and benevolent bodies whose objects were the relief of poverty for a restricted group of beneficiaries nevertheless met the express requirements in the Charities Act 2006, and in case law prior to the coming into force of the Act, that they be "for the public benefit". Their purposes were therefore charitable.

David Casement QC and Tim Collingwood continue to act for the Trustee in the long-running bankruptcy of Al Midani, tracing assets in various jurisdictions including France, Spain and the Middle East.

Lance Ashworth QC continues to appear in *Thursfield v Thursfield* [2012] EWHC 3742 (Ch), which involves the enforcement of a US\$5.7m judgment of the Michigan courts for breach of a settlement agreement following a divorce. Lance acts for the wife. The husband has been committed to prison for 2 years for failure to give information and subjected to disclosure order based on the *North Shore Ventures* decision (in which John Machell QC appeared) in respect of a family trust established by the husband in which he claims to have no beneficial interest.

In *Re Nina Wang Dec'd* Frank Hinks QC and Thomas Braithwaite acted for a charitable foundation in proceedings brought by the Hong Kong Secretary for Justice to determine the true construction of a homemade Chinese will of the woman who was by repute the wealthiest woman in Asia. During the hearing Frank had to survive the attentions of the local paparazzi with his photograph (sometimes not so flattering) appearing repeatedly in the press.

Jonathan Harris is instructed in one of the world's highest value ancillary relief and trusts disputes taking place in at least four jurisdictions. Jonathan also acted in an extremely high value offshore trusts dispute concerning a well-known family.

## ...whilst other major practice areas including fraud, company and insolvency were also very active.

Philip Marshall QC and Justin Higgo represent Aeroflot in conspiracy claims against Boris Berezovsky, Nicolai Glushkov and the Forus Group of companies, and in separate proceedings to enforce a Russian judgment against Messrs Berezovsky and Glushkov. Philip Jones QC and Jennifer Haywood represent Mr Glushkov. In 2012, Aeroflot's attempt to enforce the Russian judgment failed. The judge ruled that the claim breached the principle of finality, as Aeroflot had previously obtained (and enforced) a judgment in respect of the same cause of action. Aeroflot is seeking permission to appeal the decision. Aeroflot's other claim continues.

Liz Jones QC, Justin Higgo and Dan McCourt Fritz have been involved in a multi party dispute arising out of the sale of a trust company. There are 2 sets of proceedings (including two freezing orders) in Jersey, and in England there are contribution claims, claims to property which has escheated to the Crown on the dissolution of BVI companies, and claims to property the subject of orders under POCA. Many of the claims are based on fraud. A 28 party mediation took place in December. Giles Richardson has represented the former trust company directors.

Dominic Dowley QC appeared for the successful claimants in *Novoship (UK) Limited and Ors v Mikhaylyuk and Ors*, a multi-million dollar fraud claim against agents. The fraud related to bribes paid in connection with charters of oil tankers.

Philip Marshall QC led a team of barristers, including Ruth den Besten, representing Patrick McKillen against the Barclays Brothers and others in a substantial shareholders' dispute concerning the ownership of the Berkeley, Connaught and Claridge's hotels. The trial involved complex questions, including about breach of pre-emption rights, the operation of good faith provisions as between shareholders and unfairly prejudicial conduct. Judgment was delivered in October 2012, with an

expedited appeal listed to be heard in February 2013.

Paul Chaisty QC appeared for the defendant at trial in *Access Bank plc v Akingbola*. The case involved a fraud claim against the former Chief Executive of Access Bank plc, a Nigerian Bank, for misappropriation, illegal share purchase and price manipulation. David Casement QC continues to advise and represent HSBC Trustees in relation to these proceedings; and Liz Jones QC and John Machell QC were involved at earlier stages in the proceedings.

Daniel Lightman appeared for the Claimant in *Bamford v Harvey* [2012] EWHC 2858 (Ch) and David Casement QC appeared for the first defendant. The Judge held that wrongdoer control of a company was not an absolute condition to the bringing of a derivative claim.

David Blayney represented the Independent Valuer of Bradford & Bingley in the references to the Upper Tribunal seeking to challenge his nil valuation of shares and subscription rights. The references were all dismissed following a hearing in May 2012.

Daniel Lightman appeared for the first defendant in *Eckerle & Ors v Wickeder Westfalenstahl GmbH & anr* [2013] EWHC 68 (Ch), in which the Judge struck out the claim on the ground that an application to cancel a resolution to turn a plc into a private company cannot be brought under section 98 of the Companies Act 2006 by a person who is not a registered shareholder but whose shares are held by a nominee.

Justin Higgo and Adil Mohamedbhai represented a London gallery and its principal in claims alleging receipt of secret commissions in relation to the sale of a painting by the American artist Jean-Michel Basquiat.

Thomas Elias appeared on an appeal to the High Court in *Pace Europe Ltd v Dunham* [2012] EWHC 852 (Ch) regarding the issue of the enforceability of foreign judgments for multiple damages.

## In Commercial Dispute Resolution, as Chambers & Partners note, we "are instructed in some of the most interesting and substantial cases in the market" and banking continues to be a growth area.

Liz Jones QC, Simon Hattan and Gareth Tilley appeared in *Alhamrani v Alhamrani*, probably the largest case yet to have been heard in the BVI Commercial Court, concerning the alleged acquisition of shares in a BVI company under a settlement brokered by the Saudi Court of Appeal.

In *Chambal v Trafigura and Ors*, Dominic Dowley QC and Justin Higgo act for the French Bank issuer of a letter credit in a dispute between Republic of Sudan and the new Republic of South Sudan over ownership of a cargo of oil. Lance Ashworth QC appeared in *Mulu Mengiste v The Endowment Fund for the Rehabilitation of Tigray*, an application for a stay on grounds of *forum non conveniens*. Rather unusually, the Judge directed oral

evidence. 3 days of evidence related to expert evidence given in secret by an anonymous expert at an anonymous location, attended only by Counsel for the other side on account of the expert fearing retribution from the Ethiopian authorities.

Alan Boyle QC and David Drake appeared in *Lissack v Manhattan Loft*, a 2 week trial in the Chancery Division. The case involves a claim for commission for introducing an opportunity to develop St Pancras Chambers building. Judgment is currently awaited.

David Blayney was instructed for the Administrators of Lehman Brothers International Europe in the hearing before Briggs J to determine the validity and effect of security interest provisions