



serle court

6 New Square, Lincoln's Inn  
London WC2A 3QS  
T: +44 (0)20 7242 6105  
F: +44 (0)20 7405 4004  
www.serlecourt.co.uk

# serle court in 2014

## ...and our Civil Fraud work remains as active as ever.

In *Re FPA/FPP (in liquidation)*, Hugh Norbury QC and Matthew Morrison are advising the liquidators of two companies which operated a legacy investor programme in the Isle of Man. The Manx High Court of Justice has recently resolved complex questions of trust law concerning the status of certain rights and assets of the company by adopting the solution proposed in an opinion of Hugh Norbury QC.

Philip Marshall QC and Ruth den Besten represented the administrators of Maze Properties Ltd and related companies in their claims that substantial funds generated in the Aparthotels business had been fraudulently diverted by their owner and controller, including for the purpose of funding the development of a separate, personal, French property portfolio.

Ruth Jordan acted for the respondents in a 4 day appeal to the Privy Council by the Central Bank of Ecuador in a \$192m dishonest assistance claim.

Lance Ashworth QC and Matthew Morrison are advising the University of the Arts London in respect of conspiracy claims it has commenced against its former director of IT and others for allegedly causing UAL to purchase unnecessary IT equipment and the operation of an alleged fraudulent commission scheme.

In *BTA Bank v Ablyazov* [2014] EWHC 2019 (Comm), John Machel QC acted for a Norwich Pharmacal respondent in the long running *BTA Bank v Ablyazov* litigation, including at a hearing concerning the Court's powers to deprive a Norwich Pharmacal respondent of his costs of the disclosure exercise.

Adil Mohamedbhai acted for the defendants in a high-value LMAA arbitration relating to the construction of yachts. The arbitration raised complex issues of contractual construction, breach of trust, fraud and foreign law. In May 2014, Adil assisted in obtaining security for costs against the claimant, after which the proceedings were abandoned.

## We finish with just a small selection of some of the other practice areas and cases we have been involved in.

Christopher Stoner QC successfully represented a governing body in respect of an athlete's appeal against the withdrawal of his funding.

Philip Marshall QC and Ruth den Besten appeared in *SRJ v Persons Unknown* [2014] EWHC 2293 (QB), a claim for disclosure of the identity of an anonymous blogger by his solicitors. The case has raised important points of legal professional privilege and confidence, with an appeal listed to be heard in July 2015.

In *Bimini Blue Coalition v Prime Minister of the Bahamas*, Ruth Jordan appeared in the Privy Council in two separate appeals and obtained injunctive relief in relation to the dredging of coral reef for the construction of a cruise ship ferry terminal in the Bahamas.

Daniel Lightman appeared in *Gladstar v Layzells* [2014] EWHC 1449 (Ch), a claim for damages for a breach of a solicitor's undertaking. The court considered whether amendments to statements of case should be allowed where a proposed new defence relied on illegality and where the claimant had failed to comply with a court order.

In *Moroccan Oil Israel Ltd v Aldi Stores* [2014] ETMR 55, Michael Edenborough QC and Thomas Elias successfully defended Aldi against a claim for passing-off with respect to look-a-like packaging. The Court ruled that, even though the packaging was really quite similar (and was based deliberately upon the claimant's packaging), consumers were not deceived as to trade origin.

In *The Ukulele Orchestra of Great Britain v Clausen & Anor* [2014] EWHC 3789 (IPEC), Thomas Elias successfully resisted an application for an interim injunction brought by the claimant against the defendant ensemble, The United Kingdom Ukulele Orchestra. The case is expected to go to trial in 2015.

Michael Edenborough QC appeared in *Her Majesty's Solicitor General v Dodd* [2014] FSR 27 (leading Thomas St Quintin), an application for committal for contempt of court. In a design right and registered design right infringement case (which was successful), the claimant's principal witnesses had given false evidence repeatedly about another, but eventually not pursued, cause of action. The principal deponent was sent to prison for 6 months, and the other for 2 months.

Michael Edenborough QC also appeared in *Golden Balls Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2014] ETMR 1 and [2015] ETMR 6, a *pro bono publico* case where the General Court and Court of Justice held that GOLDEN BALLS and BALLON D'OR, were not confusingly similar.

Conor Quigley QC appeared for an interested party in *The Queen (on the application of Sky Blue Sports and Leisure Ltd) v Coventry City Council* [2014] EWHC 2089 (Admin). The Court dismissed a claim that the grant of a loan by the Council to Arena Coventry Ltd constituted state aid within Article 107(1) TFEU, on the grounds a private market operator would not have made the loan on the same conditions.

Conor also appeared in *Alro SA v European Commission*, a decision of the General Court (Fifth Chamber), concerning whether the Commission should have opened an investigation into electricity prices for a major aluminium producer in Romania.

Suzanne Rab has advised a gas purchaser on EU competition law claims including abuse of dominance arising in a dispute with its supplier, a major EU gas incumbent. The dispute was submitted to arbitration under ICC Rules and settled for approximately €40m.



**In 2014 Serle Court had another busy and varied year. The cases we have highlighted in this summary start with some significant high profile cases, many in the higher courts; then we have taken the opportunity to share examples from the broad range of practice areas that we cover. They include cases involving household names, in overseas jurisdictions, establishing important points of principle and some very unusual cases. I hope you find the review interesting.**

Alan Boyle QC Head of Chambers

## This year we have appeared in a large number of high profile cases many in the Court of Appeal, Supreme Court and Privy Council.

Elizabeth Jones QC and Simon Hattan succeeded in having an appeal to the Privy Council dismissed in *Alhamrani v Alhamrani* [2014] UKPC 37. The hearing related to an appeal from the longest trial held in the BVI commercial court (in which Gareth Tilley was also instructed), and considered a claim to ownership of a BVI company arising out of a Saudi law contract, with the court applying Sharia law. The appeal raised, among other questions, the relationship between expert and court in interpreting a foreign law contract.

We have appeared on both sides in the RBS Rights Issue Litigation. The claims are brought by investors in the Rights Issue undertaken by RBS in 2008, alleging that the Prospectus was misleading and/or did not contain the information necessary for them to make an informed assessment of RBS' financial position and prospects. There are four claimant Groups, who have been represented by Bird & Bird, Stewarts Law, Quinn Emanuel and Leon Kaye Solicitors. The principal defendant is RBS. The Bird & Bird Group had also issued proceedings against four of the bank's former directors, including its then CEO Fred Goodwin. The total value of the claims is likely to be in excess of £3bn. The case is one of the first to be brought under section 90 of the Financial Services and Markets Act 2000, and could set important case law. Philip Marshall QC has been acting for the claimants, instructed by Bird & Bird, and David Blayney QC and Simon Hattan are acting for the defendants, instructed by Herbert Smith Freehills.

We acted in the case of *Apex Global Management Ltd v Fi Call Ltd*, a substantial shareholder dispute in which both principal shareholders have presented unfair prejudice petitions. Daniel Lightman and Emma Hargreaves appeared in a security for costs application in February 2014 ([2014] EWHC 779 (Ch)). Newey J's ruling confirmed the principle set out in *Crabtree (Insulation) Ltd v GPT Communication Systems Ltd* [1990] 59 BLR 43 that an order for security for costs will be inappropriate where the parties are cross-claiming on substantially the same facts.

In *Al Saud v Apex Global Management Ltd*, five appeals against case management decisions were dismissed by the Court of Appeal and then by the Supreme Court ([2014] 1 WLR 4495). Daniel Lightman (who

appeared alone in the Court of Appeal) and Thomas Elias acted for the successful respondents in the Supreme Court, whose decision gave important guidance on relief from sanctions.

John Machel QC and Adil Mohamedbhai appeared for the intervener, Public Concern at Work, in *Bates van Winkelhof v Clyde & Co LLP* [2014] UKSC 32, a landmark decision about whether LLP members are entitled to protection under the whistleblowing legislation. The Supreme Court held that LLP members are entitled to such protection on the basis that they can be workers.

Andrew Bruce represented Mr Thwaytes in his claim for damages against Sotheby's in *Thwaytes v Sotheby's* [2015] EWHC 36 (Ch). The claim arose out of research undertaken and advice given by Sotheby's in respect of a painting of 'The Cardsharps' owned by Mr Thwaytes. The painting was subsequently sold through Sotheby's for £42,000 and the following year the purchaser, Sir Denis Mahon, announced that the painting was by Michelangelo Merisi da Caravaggio (Caravaggio) and worth millions of pounds. The painting was then exhibited in Trapani and Forli, Italy and is now on display at the Museum of the Order of St John in Clerkenwell.

Christopher Stoner QC appeared in *Phillips v Francisc* [2014] EWCA Civ 1395, in which the Court of Appeal determined the correct application of the consultation requirements for qualifying work, the cost of which the landlord intends to recover from tenants as service charge. The correct requirements are those in the Landlord & Tenant Act 1985 and accompanying Regulations.

Philip Jones QC and Adil Mohamedbhai continue to act for the defendants in *National Crime Agency v Perry and Ors*. The very substantial civil recovery claim brought by the National Crime Agency (NCA) has been discontinued, with the NCA having been ordered to pay the defendants' costs on the indemnity basis. Certain of the defendants are now seeking compensation from the NCA for the losses caused by the property freezing order sought by the NCA over their assets.

Jonathan Adkin QC appeared for the respondent in the leading authority on limitation periods for dishonest assistance and knowing receipt claims,

**Williams v Central Bank of Nigeria** [2014] UKSC 10. He was described by Lord Sumption as having presented his client's argument "exceptionally well".

Philip Marshall QC and Justin Higgs continue to represent Aeroflot in conspiracy claims against the estate of the late Boris Berezovsky, Nicolai Glushkov and the Forus Group of companies, and in separate proceedings to enforce judgments obtained against Mr Berezovsky and Mr Glushkov in Russia.

Paul Chaisty QC acted for the successful appellants in **Sugarman v CJS Investments LLP** [2014] EWCA

1239, in which the Court of Appeal determined that the construction of an article in a management company's Articles of Association meant that each member was entitled to one vote only, not one vote per share, whether the vote was cast by poll vote or on show.

In **Novoship (UK) Ltd v Mikhaylyuk** [2014] EWCA Civ 908, the Court of Appeal dealt with questions of the availability of the remedy of an account of profits made by dishonest assistance and breach of fiduciary duties, causation and proportionality. Dominic Dowley QC (instructed by Ince & Co) acted for the claimants/respondents.

## Our Private Client work includes complex international trust cases in numerous jurisdictions

Daniel Lightman acted for the successful defendant in **Singh v Singh** [2014] EWHC 1060 (Ch), obtaining the dismissal by Sir William Blackburne after a 5-week trial of a claim by a father that his son's business empire was held on constructive trust for the male members of his family in accordance with the Mitakshara. An application for permission to appeal was dismissed by the Court of Appeal in December 2014.

Elizabeth Jones QC, Justin Higgs, Gareth Tilley and Jonathan McDonagh were instructed on behalf of the active defendant in **Walker v Egerton Vernon & Ors**, a trust case in which a claim over £100m was made for alleged negligence in exercise of the trustees' powers of investment. The action was set down for a 6 month trial but was compromised after several mediations. Previously Alan Boyle QC, Dakis Hagen and Giles Richardson had acted for other defendants.

A number of members act in **Salem v Salem**, a dispute between members of a family over the status and ownership of assets held in various Guernsey trusts. John Machell QC and Matthew Morrison (instructed by Quinn Emanuel) act for two of the family and the trustees of two of the trusts. Dominic Dowley QC (instructed by Clifford Chance) acts for the trustees of the other trusts.

Frank Hinks QC and Tom Braithwaite acted in the Hong Kong case of **Re Nina Wang Dec'd**, concerning the construction and effect of the will of reputedly the richest woman in Asia with Frank appearing in the Hong Kong Court of Appeal in February.

David Blayney QC acts for the defendant in **Lemos v CIBC**, a claim against professional trustees in the Cayman Islands relating to the sale of shipping investments (instructed by Mourant Ozannes). The trial is listed for May 2015.

In **Manjeet Rai and Ors v (1) Joh Raj Ahir and Ors and (2) Chuni Lal Chamber and Ors**, Nicholas Asprey acted for the Trustees in charity proceedings in the Chancery Division. Judgment was given on 14 July 2014 on the true construction of the constitution of a religious unincorporated association and on 6 August 2014 when costs were awarded to the Trustees against the claimants on the indemnity basis in circumstances where the costs budget had been greatly exceeded. Leave to appeal is being sought.

Jonathan Fowles acted for and advised the second defendant in **Re Tadros**, a multi-million pound probate claim which related to, among other things, real property in central London, the Netherlands, and Sudan. The case was the subject of a decision of Morgan J ([2014] EWHC 2860 (Ch)), on an anti-suit application contested at the hearing by the claimant and the ninth defendant.

Giles Richardson continued to act in Jersey proceedings, **Barclays Wealth Trustees (Jersey) Ltd v Equity Trust (Jersey) Ltd**, in c.£50m proceedings against the former trustee of unit trusts investing in Eastern European property developments for alleged breaches of trust. The case raises novel issues as to the legal responsibilities of trustees and managers of unit trusts.

## ...and we have covered a broad range of Property work.

In **Lictor Anstalt v Mir Steel UK** [2014] EWHC 3316 (Ch), Tom Braithwaite and Dan McCourt Fritz acted for the owners of a steel mill who had failed to protect their rights on the register and lost their title due to the mill's annexation to the land. They successfully established that the sale of the mill by administrators was a breach of contract, procured by the purchasers.

In **Re 3 Aylmer Drive, Stanmore** [2014] UKUT 0153 (LC), Andrew Bruce represented the objectors on an application to modify a restrictive covenant under section 84(1)(aa) of the Law of Property Act 1925. The objectors were awarded compensation of £75,000 and their costs.

Andrew Francis appeared in **Kirkby v Heaney** [2014] UKUT 507 (TCC). This was an appeal to the Upper Tribunal (Tax and Chancery Chamber) "UT" in a Land Registration dispute. On the appeal H sought to adduce evidence which was

not before the First Tier Tribunal; "FTT". The decision is significant for three reasons. First, it is the first decision of the UT in a non-immigration case (where slightly different rules apply) where the discretion to admit fresh evidence on appeals governed by the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Rules") has been applied. Secondly, it contrasts the Rules and CPR Part 52. In the latter the presumption is against admitting fresh evidence on appeals. Thirdly, fairness and justice and proportionality are stressed. The case is important because of the increasing number of cases being heard by the FTT with appeals to the UT.

Christopher Stoner QC appeared for the successful defendants in **R Square Properties Ltd v Nissan Motors (GB) Ltd**, where the Court upheld on appeal the trial judge's determination that exclusive rights to park were properly categorized as easements.

## Our presence in Commercial Litigation cases continues to grow

In **QOGT v International Oil and Technology Fund Ltd** [2014] EWHC 1628 (Comm), Lance Ashworth QC and Dan McCourt Fritz acted on behalf of former fund managers suing the fund for US\$15m for unlawfully terminating the Investment Management Agreement. The Fund counterclaimed for up to US\$60m, claiming the fund managers breached the Investment Policies and Objectives.

Philip Marshall QC and Justin Higgs represent Anthony Stevens in **Orb v Ruhan & Ors**, Commercial Court proceedings resulting from a successful central London property development. The case involves a significant jurisdictional dispute and an application for freezing relief, and is due to be heard in February 2015.

Suzanne Rab is advising the new Payment Systems Regulator (PSR), a subsidiary of the FCA, on its approach to regulation of UK payment systems which will come into force on 1 April 2015. In addition to regulating payment systems that will be designated by Treasury, the PSR will have concurrent competition law powers and will be the relevant authority for the enforcement

of new EU regulation on interchange fees including in relation to MasterCard and Visa.

In **SMF v Butterfield** [2014] Bda LR 13, Jonathan Harris acted for the successful claimant in a £100m+ dispute which went to trial in Bermuda as to the contractual liability of a Bermuda trust to a Swiss charitable foundation to fund the construction of an opera house in Lucerne.

Jonathan Adkin QC and Ruth den Besten successfully represented Belltrey Ltd in respect of claims arising from a substantial shareholder's loan advanced to fund the operations of BetVictor.

Dominic Dowley QC and Justin Higgs continue to represent Fiona Trust and Holdings Corporation in proceedings to enforce a cross undertaking in damages.

Hugh Norbury QC has been involved in a number of breach of confidence cases in the world of private equity, including **AOS v Kelway**, in which the precise limits of the **Vercoe v Rutland** decision (in which he appeared as junior counsel on the successful side) will hopefully be worked out.

## ...whilst our Company, Partnership and Insolvency practices have had a busy year

Philip Marshall QC, Jonathan Harris and Paul Adams acted for the claimant in **Kea Investments Ltd v Novatrust Ltd**, a cross-border joint venture dispute in BVI and England involving claims in relation to lending over US\$100m. Kea successfully resisted a jurisdiction challenge before Bannister J in the BVI (October 2014) and successfully brought a jurisdiction challenge in respect of related proceedings in England (December 2014).

Lance Ashworth QC acted for the directors in **Re Credit Lucky Ltd** [2014] EWHC 83 (Ch), in relation to a Chinese owned money services bureau, alleged by the National Crime Agency to have been laundering money for Chinese criminal gangs in the UK by remitting monies (in excess of £600m over 7 years) to China.

Lance also acted for the defendant in **Sir David Garrard v Salter**, a claim for specific performance of a joint venture shareholders' agreement in respect of the appointment of a director to the board of a company valued at between £30m and £200m. He successfully resisted a number of applications, leading ultimately to the claim being stayed.

Daniel Lightman, Paul Adams and Thomas Elias appeared in **Sukhoruchkin v van Bekestein** [2014] EWCA Civ 399, in which the Court of Appeal considered whether a worldwide freezing injunction should be set aside because the claim might be barred by the operation of the 'no reflective loss' principle.

Hugh Norbury QC and Emma Hargreaves acted for the respondent to applications brought under section 238 (transactions at an undervalue) and section 239 (preferences) of the Insolvency Act 1986 by the liquidators of a telecommunications company relating to payments totalling over £1m.

Daniel Lightman appeared for the successful appellants in **Munday v Hilburn** [2014] EWHC 4496 (Ch). The lower court had struck out their claim on the basis that when the claim was issued the cause of action was vested not

in Mr Munday but in his trustee in bankruptcy. In allowing their appeal Nugee J held that an abuse of process requires not merely that the claimants ought to have known that he did not have a cause of action but actual knowledge of a lack of title to sue.

Philip Marshall QC and Matthew Morrison (instructed by Collas Crill) continue to advise the independent directors of Carlyle Capital Corporation in respect of a US\$1bn misfeasance/wrongful trading claim brought by its liquidators in Guernsey.

Nicholas Lavender QC and Adil Mohamedbhai acted for the defendant companies in a claim brought against them by their former Chairman. The claim, for unpaid fees, was brought in the Royal Court in Jersey. The defendant companies counterclaimed for breach of director's duties, including participation in criminal activities.

In **Archer v Nubuke Investments LLP** [2014] EWHC 3425 (Ch), John Machell QC acted for the successful defendants at the trial of a claim for damages for the alleged breach of implied terms concerning buy out provisions operated following the expulsion of a member from a hedge fund LLP.

John Machell QC, Jennifer Haywood and Amy Proferes act for the defendants to an LLP unfair prejudice petition which was heard in January 2015. The case - **Flanagan v Liontrust** - raises previously undecided issues concerning the application of the doctrine of repudiation to LLP agreements.

In **Fennell v Halliwell LLP**, Jonathan Adkin QC successfully appeared for the claimant in an action seeking declaratory relief as to the terms on which a number of solicitors had ceased to be partners of Halliwells shortly before its administration. There is an appeal pending.