

serle court in 2010

In 2010 Serle Court was involved in a wide variety of cases covering all of our practice areas, ranging from the high profile to the decidedly quirky, leading Chambers & Partners to comment "one of the most impressive chancery commercial sets in the market."



serle court

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Fraud cases featured prominently, including cases which *The Lawyer* has listed as some of the top cases for 2010 and 2011. We were involved in fraud cases covering a variety of sectors including banking, shipping, media and nanotechnology.

Philip Jones QC and Daniel Lightman appeared for the Respondents in *Serious Organised Crime Agency v Perry*, where two significant issues concerning the territorial ambit of the Proceeds of Crime Act 2002 (POCA) arose. Foskett J ([2010] 1 WLR 910) and the Court of Appeal ([2010] Lloyd's Rep FC 606) decided that SOCA can give information notices under POCA to persons outside the jurisdiction. Mitting J ([2010] 1 WLR 2761) decided that property freezing orders and civil recovery orders can be made under POCA in respect of property located outside the jurisdiction. The Court of Appeal heard the appeal against his decision in December 2010.

A number of members of chambers are involved in commercial fraud cases brought by BTA Bank, Kazakhstan in relation to the alleged misappropriation of some £2bn by the Bank's former management. Philip Marshall QC, Ruth Holtham den Besten and Matthew Morrison act for the Bank, whilst Justin Higgs, Hugh Norbury and Dan McCourt Fritz act for some of the Defendants. Philip, Ruth and Matthew are also instructed in relation to additional proceedings brought by the Bank in the BVI. These cases have already been highlighted by *The Lawyer* as "top 20" cases for 2011.

In *Antonio Gramsci v Recoletos* [2010] EWHC 1134 (Comm), Hugh Norbury acted for ship-owning companies of the Latvian Shipping Company in obtaining an order that various recipients of benefits allegedly obtained by fraud pay over \$40m into court as a condition of defending the claim against them.

Meanwhile in *Bagus Investments Limited v Kastening* [2010] JRC 144, Dakis Hagen advised the successful

Respondent in relation to a tracing action arising out of a Jersey criminal fraud 13 years ago. Proposed new claims in knowing receipt against a recipient of allegedly tainted funds were rejected on grounds of limitation and insufficient knowledge on the part of the Respondent.

Dakis also advised the successful Respondent in *New Media Holding Company LLC v Capita Fiduciary Group Limited* [2010] JLR 272. The case involved the rejection of an attempt by a media company embroiled in New York fraud proceedings to obtain wide-ranging *Norwich Pharmacal* relief against an offshore fiduciary services provider.

Jonathan Adkin was instructed on behalf of trustees in *Jennington International v Assaubayev & Ors*, a multi-hundred million dollar fraud claim in the Chancery Division.

Dominic Dowley QC and Justin Higgs were instructed in the trial of conspiracy and bribery claims brought by Sovcomflot and Novoship, the Russian commercial fleet operators, against a prominent Russian businessman in relation to his commercial dealings with their respective former director generals. Judgment was given after a trial spanning a six month period. Sovcomflot and Novoship succeeded in establishing that their subsidiaries had been the victims of a dishonest commission scheme, but were unsuccessful on their additional ship finance, S&P and chartering claims.

Justin Higgs also appeared for a start-up nanotechnology business based in Geneva in proceedings against its former CEO for misappropriating in excess of US\$3m of the company's loan funding.

And we continued to demonstrate the breadth of our chancery commercial practice, sometimes in very unusual cases...

Philip Marshall QC and Andrew Bruce appeared in *Dickson v Christie's*. The Claimants alleged that an international auction house had failed to undertake appropriate research or advise them to have their painting of 'Salome' cleaned and restored, when such research or cleaning would have revealed that the painting had been in the collection of King Charles II and was likely to have been by the hand of Titian. The painting was subsequently sold by the auction house for £8,000. When the painting re-appeared on the market, having been restored, it was valued at US\$ 4-6m.

Michael Edenborough QC and Thomas Elias appeared in *Harrison v Harrison* [2010] FSR 25, 604, one of the few cases dealing with the moral rights of derogatory treatment and false attribution.

Michael also appeared in the Court of Appeal in *Budejovicky Budvar NP v Anheuser-Busch Inc* [2010] RPC 7, resulting in a reference to the CJEU on what is meant by acquiescence in the trade mark legislation.

Gareth Tilley acted for the claimant in *Poncelet v NPower Ltd*, believed to be the first successful case of a consumer claiming damages against a utility provider under the Protection From Harassment Act 1997 following a series of demands for payment of unpaid electricity bills that were not actually owing. The judge described the defendant's conduct as the "abominable... oppressive and unacceptable conduct by a large company upon a small individual."

Geraldine Clark successfully defended a retired barrister in *Legal Cases Commission v Henthorn*, a test case brought by the LSC attempting to claw back legal aid payments made up to 23 years previously. In rejecting the claim, the court held that the LSC's established practice did not comply with the preconditions for statutory claims and there was no restitutionary claim.

Hugh Norbury and Robin Rathmell acted for the victorious entrepreneurs in *Vercoe v Rutland* [2010] EWHC 424 (Ch) in which the private equity standard form non-disclosure agreement was considered and found on the facts to protect the claimants' confidential information, resulting in a payment of more than £3m calculated on a *Wrotham Park* basis.

Judgment is awaited from the Court of Appeal in *EDF Energy Networks (EPN) plc v BOH Ltd & Ors* in which the Appellant contended that the

Landlord and Tenant Act 1954 required interpretation pursuant to section 3 of the Human Rights Act 1998 to make it convention compliant. Chris Stoner QC acted for the Respondent.

Gareth Tilley acted for the Defendant in *Sargospace Ltd v Kelsey*, an unusual mandatory injunction application to compel the Defendant to resume broadcasting adult videos on Sky television.

Philip Jones QC, Hugh Norbury and Thomas Elias continue to act for Michael Cherney, a Russian-born Israeli billionaire, in a £10m claim arising out of a series of London property transactions in which Mr Cherney claims that those acting on his behalf breached their fiduciary duties and their duties of care. John Machell acts for Frank Neuman, Mr Cherney's former fiduciary, in the same litigation. The dispute between Mr Cherney and Mr Neuman has settled but a trial of the remaining dispute between Mr Cherney and his former solicitors is scheduled to take place in the first half of 2011.

Will Henderson acts for HM Attorney General in *Attorney General's Reference in relation to educational charities and Independent Schools Council v Charity Commission*. These related matters raise contentious issues as to whether the public derives sufficient benefit from the operation of an independent fee paying school for the operating entity to be capable of being a charity. Both matters are due for a substantive hearing before the Upper Tribunal in May 2011.

Nicholas Asprey acted for the successful party in an arbitration dispute between a distributor and a supplier of electricity over the construction of a contract for the provision of metering services. The case raised an interesting question of law on implied novation namely whether the assignee of the contract is liable for the pre-assignment liabilities of the assignor in circumstances where the assignor is known to be in financial difficulty. This and other aspects of the decision may go to appeal.

Geraldine Clark acted for a successful Greek businessman who had lost over 3m Euros during the financial crisis at the end of 2008. He alleged that a Credit Suisse financial adviser had negligently advised him to invest in leveraged derivative investments promoted by the bank without warning him of the risks. The case settled at the very end of 2010, six weeks before a nine day Commercial Court trial.

In trust litigation we continued to be involved in precedent setting cases and significant international trust disputes.

In *Pitt v Holt* [2010] EWHC (Ch) the Court of Appeal considered an appeal by HMRC against the setting aside of a settlement on *Hastings-Bass* grounds which had been created by a Court of Protection receiver where there had been a failure to consider the IHT consequences. Judgment from the Court of Appeal is eagerly awaited by trust and estate practitioners because it will be the first time for some years that the fundamentals of these principles have been examined by the Court of Appeal. Will Henderson acted for Mrs Pitt at first instance and continues to act for her in the Court of Appeal. Philip Jones QC and Ruth Jordan act for HMRC in the Court of Appeal.

Dakis Hagen advised the Respondent trustee in *Deery v Continental Trust Company Ltd & Anr* [2010] JRC 001. The Royal Court of Jersey rejected letters of request from the Family Division of the High Court which sought to obtain documentation filed by a trustee in private proceedings.

There were also a number of company and partnership/LLP cases raising important points of law.

David Casement QC, John Machell and Jennifer Haywood acted for Artisan H Ltd, a property developer in a dispute with its LLP partner over the rights of one partner to control the LLP. The issues of construction of the LLP agreement were decided in their client's favour at a trial listed 2 weeks after issue of the claim because of the urgency of the matter. The court also granted an interim injunction without requiring an undertaking in costs in respect of the other issues.

Daniel Lightman appeared for the successful applicant in *Re Dunstons Publishing Ltd* (Lawtel, 21 October 2010). The Chancellor ordered rectification of a company's register of members where the company's sole director had incorrectly treated a transfer notice entitled "without prejudice" as invalid and had purported to transfer the shares to himself (the only other member of the company) at £1 per share.

Daniel also appeared in *Carlisle and Cumbria United Independent Supporters' Society Ltd v CUFC Holdings Ltd* [2010] EWCA Civ 463, the first case concerning the statutory derivative claim under the Companies Act 2006 to be considered by the Court of Appeal.

Frank Hinks QC and Jonathan Adkin acted in *Estate of Edward St George v Sir Jack Hayward & Ors*. This multi-million dollar litigation in the Bahamas involved a dispute between the estate of Edward St George and his former business partner Sir Jack Hayward.

Richard Walford has been instructed to act for the two principal Defendants in a case where companies are alleged to have conspired with their Directors to make it impossible for the Claimants

Frank Hinks QC appeared in *Q v Q* in the Supreme Court of Bermuda in March. Ground CJ accepted that two inter vivos trusts were void as testamentary dispositions with a consequential tax saving.

Philip Jones QC and Jonathan Harris appeared before the Privy Council in December in the *Spread Trustees* case concerning the permissible scope of trustee exemption clauses in Guernsey and the sources of Guernsey customary law.

In the Royal Court of Guernsey, disputes concerning the *T Financing Trust* continue. Richard Walford acted in litigation concerning the validity of a Protector appointment, and latterly in seeking to recover sums allegedly stolen from the trust by a trusted fiduciary agent.

Dakis Hagen advised the corporate trustee in *Re the Roneragh Trust* and *Re the Milan Trust* [2010] JCA 017, which involved consideration by the Jersey Court of Appeal of beneficiaries' rights to natural justice arising on a trustee's application for directions.

to enforce substantial judgments. This is part of the long-running *Masri v Consolidated Contractors* litigation.

Philip Marshall QC is representing Fulham Football Club in an unfair prejudice petition brought against the Premier League. The main issue is whether the petition should be stayed pursuant to an arbitration clause.

Ruth Jordan acted for the Respondent in *Re Stakefield (Midlands) Ltd* [2010] EWHC 2518 (Ch), an application to strike out directors' disqualification proceedings on human rights grounds. It was held that a breach of duty on the part of the Secretary of State by failing to obtain evidence or investigate would not result in the proceedings being struck out as unfair.

Ruth also acted in *Mercury Tax Group (In Administration), HM Revenue & Customs v Klempka* [2010] EWCA Civ 1379 in which it was held that the quantification and characterisation of a debt for the purposes of entitlement to vote at a meeting of creditors of a company in administration were to be effected as at the date of administration rather than the date of the meeting and that the chairman's powers of quantification should be exercised taking into account events which had occurred since the date of the administration.

Geraldine Clark acted for the claimant company in a directors' negligence claim. The company sued three of its former directors alleging they had acted negligently in recommending that the company invest over £1 million in derivatives investments they did not understand. This was a very rare case of a company suing its former directors where fraud was not alleged.

There were a large number of high profile cases across a number of other practice areas, including entertainment and media, insolvency, intellectual property, professional negligence, property and sport:

The mammoth English administration of the Lehman Brothers "hub" in London raised a range of significant novel issues, including important issues as to the trust principles underlying the complex systems of intermediated securities holdings through which much of the world's wealth is held. Philip Jones QC and Giles Richardson appeared at the RASCALS trial for key US Lehman entities.

Philip Marshall QC acted for Martin Broughton, Christian Purslow and Ian Eyre, the independent directors of Liverpool Football Club, in a well publicised dispute arising out of the sale of the Club to New England Sports Ventures. Tom Hicks and George Gillett, the previous owners of the Club, brought proceedings in the High Court and in Texas in a bid to prevent the sale. Floyd J dismissed the proceedings brought in the High Court and subsequently granted an anti-suit injunction restraining Hicks and Gillett from continuing with the Texas proceedings.

In a landmark ruling in *Granatino v Radmacher* [2010] UKSC 42, the Supreme Court held that pre-nuptial agreements freely entered into should be upheld, save where it would be unfair to do so. Jonathan Harris acted for the successful respondent.

Jonathan Adkin and Will Henderson are involved in *Boris Berezovsky v Estate of Patarkatsishvili & Ors*. This is one of the most substantial cases, in terms of value, presently before the Chancery Division. Jonathan and Will appear for the family of Badri Patarkatsishvili, one of the main protagonists, in proceedings brought by his former business associate Boris Berezovsky. Jonathan was instrumental this year in persuading the court to conduct the first ever joint case management hearing between the Chancery Division and the Commercial Court (in which the parallel proceedings brought by Berezovsky against Roman Abramovich are ongoing).

Boris Berezovsky also featured in *North Shore Ventures v Anstead Holdings* [2010] EWHC 1485 (Ch), which is going to appeal in February 2011 and raises important issues of principle on the scope of the pre-guarantee duty of disclosure and conclusive evidence clauses. John Machell acts for the defendants.

Conor Quigley QC appeared in *White & Ors v The Crown* [2010] EWCA Crim 978. This case involved a challenge by a person convicted of smuggling tobacco products into the UK against an order that he serve an additional sentence in lieu of payment of the tax payable on the smuggled goods. The Criminal Court of Appeal declared that he was liable to pay as having been an active participant in the smuggling operations and not just a driver on behalf of the organisers.

Elizabeth Jones QC and Ruth Holtham den Besten were involved in *Pink Floyd Music Ltd v EMI Music Limited* [2010] EWCA Civ 1429, a high profile music business case relating to the ability of record companies to unbundle iconic albums on iTunes and similar internet music providers.

Michael Edenborough QC appeared in *IP Translator* (Case C-307/10), a TFEU Article 267 reference to the CJEU to decide how trade mark specifications should be construed. The decision is likely to affect the scope of protection of around 25% of all trade marks in the EU.

Conor Quigley QC appeared in *Churchill Insurance Company Ltd v Wilkinson & Ors* [2010] EWCA Civ 556. This was an appeal by Churchill against a decision in the High Court declaring section 151(8) of the Road Traffic Act inoperable in the light of the Second Motor Insurance Directive so as to prevent the insurance company from invoking a statutory right of indemnity against an injured passenger who had allowed an uninsured driver to drive the car which was subsequently involved in an accident. Questions have been referred to the European Court of Justice for determination.

Philip Marshall QC and Ruth Holtham den Besten are involved in *Lexi Holdings v Pannone*. This professional negligence claim has given rise to a summary judgment application raising important issues about apparent authority. Philip also acted for the administrators of Lexi Holdings plc with Andrew Bruce in *Lexi v DTZ and Mace & Jones*, which concerned an application to amend defences shortly before the trial of a professional negligence claim. The court considered the possible scope of an illegality defence in claims brought by a mortgage lender against its solicitors and valuers.

Patrick Talbot QC acted for the Appellants in *Skinner v Jervis*, an appeal to the Privy Council from the Court of Appeal of the Bahamas about a residential development project on Grand Bahama Island.

Chris Stoner QC represented British Waterways in *British Waterways v Davies*, a potentially landmark decision on the interpretation of the various British Waterways Acts relating to the requirement for and charging for licences for canal vessels which move on a regular basis.

David Drake appeared for the claimant in *Network Rail Infrastructure Ltd v Conarken Group Ltd* [2010] BLR 601. Akenhead J decided that where network infrastructure had been damaged by road hauliers' negligence, economic loss consisting in impairments to Network Rail's revenue under track access agreements with train operating companies was recoverable.