



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

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

Philip Jones QC and Adil Mohamedbhai acted for the applicants in *Perry & Ors v NCA*, a very substantial compensation claim in the region of £200m against the government body for loss said to have been caused by a property freezing order.

Lance Ashworth QC appeared *pro bono* in the Supreme Court for the Access to Justice Foundation (of which Lance is the Bar Council's trustee) on the question of *pro bono* costs orders in family proceedings (*Re S (Children) (Appeal from Care and Placement Orders)* [2015] UKSC 20).

Khawar Qureshi QC and Daniel Lightman QC appeared in *ENI S.p.a v Malabu Oil and Gas Ltd*, acting for the Public Prosecutor of the Court of Milan in relation to an application by Malabu Oil and Gas Ltd to discharge a restraint order which the Crown Court had issued on an *ex parte* application, in proceedings under Article 6(2) of the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 2005.

Christopher Stoner QC acted in a sports selection appeal relating to an athlete's non-nomination for the World Student Games and argued in case late in 2015 before CAS in Switzerland for British Swimming and individual athletes relating to the ratification of world records.

In *Network Rail Infrastructure Ltd v Handy* [2015] EWHC 1175 (TCC), the long-running dispute between Network Rail and road users' insurers over who should bear the economic costs of drivers crashing into or onto railways may have reached a conclusion, reaffirming in the process that there is no bar to recovery of pure economic loss in cases of trespass concurrent with negligence. David Drake appeared for Network Rail.

Daniel Lightman QC appeared in *Solland International Ltd v Clifford Harris & Co* ([2015] EWHC 2018 (Ch) and (on appeal) [2015] EWHC 3295 (Ch)), on whether a professional negligence claim should be struck out as an abuse of process where the claimants had put their claim on hold for a year while they were involved in other litigation and had then spent another year considering how best to progress it, but without taking any steps to do so.

Jonathan Adkin QC appeared for the successful appellants before the Court of Appeal in *Franco-Typ-Postalia Ltd v Mailing Room Ltd* [2015] EWCA Civ 1167, a significant case concerning the proper extent of injunctive relief restraining freedom of speech in a commercial context.

Daniel Lightman QC and Paul Adams appeared on behalf of the defendants in *Rawlinson & Hunter Trustees SA*

(*Trustee of the Tchenguiz Settlement v ITG Ltd and Bayeux Trustees Ltd (Trustees of the Tchenguiz Discretionary Trust)*), successfully opposing the claimant's application for permission to serve proposed re-amended particulars of claim out of the jurisdiction on the basis that it was an abuse of process ([2015] EWHC 1664 (Ch); see also (on costs) [2015] EWHC 1924 (Ch)).

Daniel Lightman QC appeared in *C v C* [2015] EWHC 2795 (Fam), an important decision limiting the jurisdiction of the Family Court under the Matrimonial Causes Act 1973 section 37, the Senior Courts Act 1981 section 37 and the inherent jurisdiction to continue an interim freezing injunction obtained without notice by a husband during divorce proceedings, which had the effect of restraining a wife and son from performing their duties as directors of two family companies.

In *Barker v Baxendale Walker Solicitors & Anor*, Dakis Hagen represented the claimant in a substantial professional negligence action concerning an allegedly defective EBT structure. The trial of the claim took place in the Chancery Division in January 2016. Oliver Jones also assisted on the case.

Ruth Jordan appeared for HMRC in *Stagecoach Group plc v HMRC*, a tax appeal in relation to a 'derecognition' scheme in which a loan relationship was exploited by the transport group in order to produce tax deductible debits amounting to £39m. Ruth is also instructed in a number of other upcoming UK and Scottish tax appeals in relation to other variants of this scheme involving derivative contracts.

Ruth Jordan advises Save The Bays, a Bahamian environmental group, in a series of high-profile judicial reviews and constitutional actions against the Government of The Bahamas in relation to unregulated reclamation of crown sea-bed, grant of crown leases, oil contamination and the repeal of planning legislation.

Ruth Jordan acted for the respondents in *Metaxides v Swart* [2015] UKPC 32 a case on appeal to the Privy Council from the Court of Appeal of The Bahamas about the validity of a consent order in an action where the defendant was a company that did not exist when the action was begun.

Emma Hargreaves appeared for the defendant at the trial of a claim for enforcement of a judgment worth over US\$2m obtained in South Dakota (*Superior Composite Structures LLC v Parrish* [2015] EWHC 3688 (QB)), a case involving issues of fraud, principles of natural justice, public policy and Article 6 of the ECHR.

# serle court in 2015



In 2015 Serle Court has again been involved in some of the most interesting cases across a broad range of practice areas; some high profile and others establishing key points of principle. This Annual Review highlights a variety of these cases, many before the higher courts, and includes well-known cases as well as those from a range of different jurisdictions. I hope you will find the review interesting.

Alan Boyle QC Head of Chambers

## This year, we have maintained our strong presence in Company, Partnership and Insolvency

Elizabeth Jones QC, Philip Marshall QC, Prof Jonathan Harris QC (Hon.), Justin Higgs, Gareth Tilley and Paul Adams represent the interests of New Zealand businessman and philanthropist Sir Owen Glenn in various proceedings relating to a BVI joint venture company, Spartan Capital Ltd: *Glenn v Watson; Kea Investments Ltd v Novatrust Ltd; and Novatrust Ltd v Kea Investments Ltd* [2014] EWHC 4061 (Ch) (currently on appeal).

Philip Marshall QC and Matthew Morrison 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. The trial is due to commence in June 2016.

Philip Marshall QC and Ruth den Besten are currently instructed to advise the Lehman group service company, Lehman Brothers Ltd, on issues arising in its administration, including its potential liability as a shareholder and contributory of LBIE, the principal Lehman trading entity.

Lance Ashworth QC and Matthew Morrison are advising a number of directors and shareholders of Galasy plc, a Jersey company, in connection with litigation which is ongoing in England, Jersey and Malaysia concerning the construction and scope of a relationship agreement entered into in connection with the company's listing on AIM.

Lance Ashworth QC represented the defendant in *Kaneria v Kaneria*, a 21 day trial of preliminary issues in a section 994 petition in the Chancery Division, about the Ambassador's Hotel in Euston. The defendant succeeded on all preliminary issues, defeating a claim for approximately £7m.

John Machell QC acted for the appellant in the Court of Appeal in the case of *Bottrill v Harling* [2015] EWCA Civ 564, a case involving an orally agreed partnership agreement. John was assisted by Oliver Jones.

John Machell QC and Jennifer Haywood acted for the respondents in *Flanagan v Liontrust Investment Partners LLP* [2015] EWHC 2171 (Ch) in which Henderson J gave the first judgment on the question whether the doctrine of termination by acceptance of repudiatory breach applies to LLP agreements.

Hugh Norbury QC is acting for defendant Guernsey trustees in a c.£20m claim in the Chancery Division relating to an alleged partnership/joint venture concerning London real estate: *Newmarket Holdings (Guernsey) Ltd v Confiance Ltd and Ors*.

Timothy Collingwood acted for the defendant in *Burberry Group plc v Fox-Davies* [2015] 2 BCLC 66, which is the leading case on access of the public to a company's register of members under the Companies Act 2006, and provides guidance on the application of the test of "proper purpose" concerning whether the court would direct that access be denied.

In *Cullen Investments Ltd v Brown* [2015] 2 BCC 539, Timothy Collingwood represented the applicant on an application for permission to continue a derivative claim, which succeeded even though the potential recovery was unclear and there was a potential alternative claim under a joint venture agreement.

In *MMM v Nusantara*, Geraldine Clark and Zahler Bryan acted for a company defending claims brought by former directors and bringing a counterclaim against those directors for breach of duties in respect of a multi-million pound loan. The case settled during the Commercial Court trial of the action.

Gareth Tilley represented the successful claimants in *Re Fingood LLP; Polegoshko v Ibragimov* [2015] EWHC 1669 (Ch), a case concerning the disputed legal and beneficial ownership of a Lithuanian shipping business run through an English LLP.

## ...whilst our Commercial Litigation and Civil Fraud work has remained as active as ever

Dominic Dowley QC, Justin Higgo and Dan McCourt Fritz represent Fiona Trust and Holdings Corporation in proceedings to enforce a cross undertaking in damages.

In **Orb v Ruhana** [2015] EWHC 262 (Comm), Philip Marshall QC and Justin Higgo acted for a group of proposed defendants in successfully resisting applications for Chabra relief and for service out of the jurisdiction in ongoing proceedings seeking an account of profits as a consequence of the successful development and sale of hotels in central London.

Philip Marshall QC and Ruth den Besten successfully resisted an application for far-reaching injunctive relief sought on an ancillary basis in aid of proceedings in Georgia and the UAE. They also appeared in related applications for security for costs. Both matters proceed to the Court of Appeal this year: **Ras Al Khaimah Investment Authority v Bestfort Development LLC** [2015] EWHC 3383 (Ch).

Nicholas Lavender QC represented Michael Wilson & Partners, Ltd in various aspects of its long-running dispute with former employees, including in the Court of Appeal in **Emmott v Michael Wilson & Partners, Ltd** [2015] EWCA Civ 1028. The appeal concerned findings of contempt and Lance Ashworth QC and Dan McCourt Fritz represented the company's solicitor director.

Hugh Norbury QC and Matthew Morrison continue to act for the liquidators of Isle of Man companies FPA/FPP. Their instructions currently focus on the misfeasance claims being pursued in the Isle of Man against the companies' former directors and *de facto*/shadow directors for their part in permitting loan notes totalling multiple millions of dollars in the name of FPA to be fraudulently issued in the United States.

Jonathan Adkin QC appeared before the Court of Appeal in this important case concerning the proper scope of freezing injunction disclosure orders about third party trusts: **JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev** [2016] 1 WLR 160.

Hugh Norbury QC and Dan McCourt Fritz act for a defendant firm of solicitors in a £100m+ conspiracy claim brought in the Commercial Court by Accident Exchange Ltd. The claim is to recoup alleged under-recoveries in earlier litigation through allegedly manipulated evidence.

David Blayney QC and Simon Hattan continue to act for the defendants in the RBS Rights Issue Litigation, instructed by Herbert Smith Freehills. The claims are brought by investors in the £12bn 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 now five claimant Groups. The case is one of the first to be brought under section 90 of the Financial Services and Markets Act 2000 and is due to come to trial in March 2017.

Hugh Norbury QC and Adil Mohamedbhai are acting for the principal defendant in **FM Capital Partners Ltd v Marino**, a substantial commercial and civil fraud dispute in the Commercial Court relating to the operation of a fund manager. The claim includes allegations of breach of fiduciary duty, dishonest assistance and unlawful means conspiracy.

Hugh Norbury QC acted for DF Deutsche Forfait SRO, a Czech subsidiary of a German forfaiting group against Nasser Alaghband, in a claim to enforce a €5.4m promissory note; the claim raised a highly contentious issue of German commercial law turning on the nature of the obligation assumed by Mr Alaghband.

In **Al-Mojil v Protiviti**, Jonathan Adkin QC appeared before the Dubai International Financial Centre Court, successfully resisting a challenge to jurisdiction on the grounds of *forum non conveniens*.

Hugh Norbury QC and Adil Mohamedbhai are acting in two cases concerning claims for unpaid commission. They act for the claimant in **Cornwall v Medichem**, a multi-million pound claim in the Commercial Court in respect of a range of hair products, and for the defendant in **Greenhouse v Skril Ltd**, a substantial claim in the Commercial Court relating to an online payment system and its use by online poker players.

Lance Ashworth QC acted for the guarantor of debts of a company which had entered into interest rate hedging products with RBS: **Wyatt v Royal Bank of Scotland** (Kerr J, 11 June 2015). The guarantor faced a claim for £14m.

Jennifer Haywood and Amy Proferes acted for the Republic of Djibouti in its claim against Abdourahman Boreh for abusing his position in relation to negotiations concerning the construction and operation of an oil terminal and a container terminal. They, along with other counsel from Fountain Court, were led by Lord Falconer of Thoroton: **Djibouti v Boreh** [2015] EWHC 1338 (Comm).

In **East Guardian Capital v Mazur**, Justin Higgo represented the claimants in obtaining section 44 injunctive relief and in arbitral proceedings to recover under guarantees in respect of misappropriated trade finance of a biodiesel business.

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

Christopher Stoner QC acted for the Canal & River Trust in upholding the judgment of the County Court Judge confirming that the approach to human rights issues in possession cases applied when the trust sought the removal of houseboats from the inland waterways ([2015] EWHC 534 (QB)). The matter will be considered on a second appeal by the Court of Appeal in May 2016.

Christopher Stoner QC acted for the Port of London Authority in a series of connected trials in the First-tier Tribunal (Property Chamber) on whether the PLA's title to a stretch of the River Thames had been extinguished by adverse possession, the principal act in each case being the mooring of a vessel.

In September 2015, Arnold J gave judgment in a case concerning the ownership of a Banksy mural: **Creative Foundation v Dreamland Leisure Ltd** [2015] 3 WLR 1814. John Machell QC acted for the successful claimant.

Tom Braithwaite and Zahler Bryan intervened in the Supreme Court on behalf of the Crown Estate Commissioners in the recent hearing of **Loose v Lynn Shellfish Ltd** (Court of Appeal reference [2014] EWCA Civ 846), a case involving rights over the foreshore.

In **Godden v Godden** [2015] EWHC 2633 (Ch), Ruth den Besten appeared on behalf of the claimant at trial on her claim to have retransferred a sizeable property in Bosham by mistake and/or undue influence.

## We continue to be instructed in significant Private Client cases, both domestic and in offshore jurisdictions

Alan Boyle QC and Simon Hattan continue to act for the trustees of two private trusts in multi-jurisdictional proceedings arising out of the Madoff fraud. The proceedings give rise to a number of complex issues concerning the law of restitution. A number of the issues were addressed at a trial of preliminary issues in Bermuda in May 2015 in which the trustees were successful and which is now subject of an appeal to the Bermudian Court of Appeal.

Frank Hinks QC and Tom Braithwaite acted in the Hong Kong case of **Re Nina Wang Dec'd**, concerning the implementation of a scheme to regulate the charitable trusts constituted by the will of reputedly the richest woman in Asia.

Frank Hinks QC appeared in July and November 2015 before Smellie CJ in the Cayman case of **Re The A Trust** concerning the validity of 30 years' trust administration and the proposed retirement of the trustees in favour of private trust companies.

A number of members continue to 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 act for two of the family and the trustees of two of the trusts. Dominic Dowley QC acts for the trustees of the other trusts.

John Machell QC appeared for the trustees in the Grand Court of the Cayman Islands in October in a case concerning the identity of the protector of a trust and the Court's inherent power to remove and appoint a fiduciary protector.

Giles Richardson and Sophie Holcombe were instructed for different parties in **In the Matter of the Z Trusts I to VIII** ([2015] JRC 031; [2015] JRC 214; and [2015] JRC 196C). The litigation involved consideration of the appropriate procedure for winding down a Jersey trust; issues of priority between former and current trustees' liens over trust assets; and the exercise of fiduciary powers in circumstances where the net

liabilities of the trust exceed its net assets. The decision is the first decision in any jurisdiction to determine that fiduciary powers ought to be exercised in the interests of the creditors where the trust is in a position of insolvency.

In **Davidson v Seelig and Ors**, Giles Richardson is advising and acting in the High Court in one of the first cases after the Supreme Court decision in **Pitt v Holt** to invoke the "Re Hastings-Bass" jurisdiction to set aside defective exercises of power by trustees, in relation to exercise of powers of appointment in 2003 under complex family trusts first settled in 1967 and now worth c.£500m. In associated proceedings, Justin Higgo represents parents seeking to recover and establish ownership of several hundred valuable chattels; Giles Richardson represents the children (**Davidson v Davidson**).

Ruth den Besten successfully obtained summary judgment against the chief executive of a charity who had misappropriated substantial funds for his own benefit, supported by freezing relief (**Ashman & Ors v Briers**, Mann J, December 2015).

Several members of chambers continue to act in the long-running 'Hyderabad Fund' case, a dispute over the ownership of monies once belonging to HEH the 7th Nizam of Hyderabad. In July 2015 Dakis Hagen and Jonathan McDonagh (acting for Prince Muffakhah Jah, grandson of the 7th Nizam) successfully applied for an administrator to be appointed in respect of the estate of the 7th Nizam. Khawar Qureshi QC acts for Pakistan. Giles Richardson acts for the estate of the 7th Nizam. The parties return to court in February/March 2016 for the hearing of cross-strike out applications.

In **W v W & P**, Dakis Hagen acted as Chancery counsel (with Philip Marshall QC of 1KBW as family counsel) in a three-week Family Division trial heard by Blair J. The case involved (among other things) questions of implied trusts, real property and conflicts of law. Oliver Jones also assisted on the case.

## ...whilst our presence in Intellectual Property goes from strength to strength.

Michael Edenborough QC acted in **Simba Toys GmbH & Co KG v OHIM (Rubik's Cube)** [2015] ETMR 15, Case T-450/09, an appeal to the General Court of the European Union, which decided that the black outline of the Rubik's Cube was permissible as a Community Trade Mark.

Michael Edenborough QC acted in **Intra-Press SAS v OHIM (Golden Balls)** [2015] ETMR 6, Case C-581/13 P, an appeal to the Court of Justice of the European Union, in the ongoing dispute between GOLDEN BALLS and BALLON D'OR.

Michael Edenborough QC acted for the Stilton Cheese Makers' Association to stop Stichelton cheese (an unauthorised unpasteurised version) being called Stilton.

Thomas Elias acted for The United Kingdom Ukelele Orchestra ('TUKUO')

in **Ukelele Orchestra of Great Britain v Clausen** [2015] EWHC 1772 (IPEC); [2015] ETMR 40, the trial of the dispute between the Ukelele Orchestra of Great Britain ('UOGB') and TUKUO. UOGB succeeded in their passing off action, but TUKUO succeeded on their counterclaim in invalidating UOGB's trade mark and in resisting UOGB's claim for infringement of copyright in an alleged dramatic work consisting of the format of their concerts.

Michael Edenborough QC and Thomas Elias acted for the owners of the Lucozade brand in trade mark infringement and passing off proceedings based on similarity of packaging brought against the manufacturers of Boost energy drinks.

Thomas Elias acted for PAL International Ltd in **Gama Ltd v PAL International Ltd**, defending a passing off claim based on alleged similarities in the packaging of medical wet wipes.