

serle court in 2013



I am delighted to present this review of Serle Court's 2013 activity. The cases selected highlight the unique breadth of work that Serle Court regularly undertakes. They include a large number of high profile cases with appearances in the Supreme Court and Court of Appeal, cases in our major practice areas including banking, commercial, company, fraud, property and trusts and a number in more specialist areas. I hope you find the review useful.

Alan Boyle QC Head of Chambers

We have been involved in a large number of high profile cases. In particular, we have been instructed in several of The Lawyer's "Top Cases of 2013" and "Top Cases of 2014".

In *Pitt v Holt; Futter v Futter* [2013] UKSC 26, the Supreme Court reviewed the controversial Rule in Hastings-Bass and the test for setting aside voluntary transactions on the grounds of mistake. It was the most important trust case to come before the Supreme Court for many years and raised fundamental questions as to the court's supervisory jurisdiction over trusts. Will Henderson acted for Mrs Pitt and Philip Jones QC and Ruth Jordan acted for HMRC.

Daniel Lightman represented Mrs Prest, the successful appellant, in *Petrodel Resources v Prest* [2013] UKSC 34; [2013] 2 A.C. 415, a landmark Supreme Court decision on the circumstances in which the court can pierce the corporate veil.

Michael Edenborough QC acted for AIPPI, the fourth intervener in *R (otao Prudential) v Special Commissioner of Income Tax* [2013] UKSC 1; [2013] 2 WLR 325, in which the Supreme Court ruled on the issue of whether legal advice privilege should be extended to tax accountants when advising on tax matters.

Philip Marshall QC, David Blayney QC and James Mather appeared for the claimant in *Constantin Medien AG v Ecclestone & Ors*, a claim for damages relating to an alleged \$44m bribe paid by Bernie Ecclestone and his family trust upon the sale of commercial rights in Formula One. They were assisted by Ruth den Besten and Emma Hargreaves.

Dominic Dowley QC and Justin Higgs appeared for the appellants in *Fiona Trust & Holding Corp v Skarga* [2013] EWCA Civ 275 in which the Court of Appeal upheld the judge's decision under the Private International Law (Miscellaneous Provisions) Act 1995 that the bribery claim in tort was governed by Russian law.

In the ongoing litigation in *Aeroflot v Berezovsky, Glushkov, Forus Holdings SA & Ors*, Philip Marshall QC and Justin Higgs continued to represent Aeroflot and Philip Jones QC and Jennifer Haywood continued to represent Mr Glushkov. Aeroflot is suing in relation to a number of financial arrangements entered into to the alleged benefit of companies in which the Defendants were interested and which it is alleged resulted in the misappropriation of substantial

overflight revenues in the sum of US\$99m.

Philip Marshall QC and Justin Higgs also continued to represent Aeroflot, and Philip Jones QC and Jennifer Haywood Mr Glushkov in *Aeroflot v Berezovsky & Glushkov* [2014] EWCA Civ 20, proceedings to enforce a Russian judgment for the recovery of inflation adjusted loss found to have been caused by certain financial arrangements between Aeroflot and a company associated with Messrs Berezovsky and Glushkov. Most recently, the Court of Appeal overturned the summary dismissal of Aeroflot's claims for the recognition and enforcement of the Russian judgment, ruling that the question of whether the original Russian judgment was final and binding could only be determined at trial.

Members of Serle Court continued to be involved in the *BTA Bank* litigation. Philip Marshall QC, Philip Jones QC, Ruth den Besten and Matthew Morrison acted for JSC BTA Bank in connection with certain of its proceedings brought against the Bank's former Chairman, Mr Abyazov. Hugh Norbury QC acted for Mr Zharimbetov, the Bank's deputy chairman and a defendant in two of the proceedings. A total of ten claims have been issued in the Commercial Court and Chancery Divisions seeking to recover in excess of US\$6bn. The Bank obtained judgment in three of these claims in March 2013. Elsewhere in the *BTA Bank* litigation, John Machell QC and Sophie Holcombe acted for a Norwich Pharmacal respondent, obtaining an order cutting down the scope of the disclosure order and the return of his passport.

Daniel Lightman and Paul Adams appeared in several substantial hearings in the hotly contested shareholder dispute *Re Fi Call Ltd*. The case has so far raised issues as to the circumstances in which relief can be obtained in an unfair prejudice petition against a party who is not a director or shareholder (see [2013] EWHC 1652 (Ch)), whether hearings should be held in private where one party alleges that the proceedings represent an attempt at extortion ([2013] 1 WLR 2993 (CA)), whether a Saudi Prince was to be regarded as part of the household of the King for the purposes of claiming sovereign immunity ([2013] 4 All E.R. 216), the appropriateness of an unless order as a sanction against

a party who refuses to make a witness statement (see [2013] EWHC 2818 (Ch)) and the circumstances in which an unless order can be varied rather than appealed ([2013] EWHC 3478 (Ch)).

Philip Marshall QC, Justin Higgs and Ruth den Besten are acting for the Bank in **Bank of St Petersburg v Vitaly Arkhangel'sky & Anor**, a claim to enforce a series of guarantees afforded to a defaulting oligarch and for declaratory relief to exonerate the Bank from accusations of corporate raiding made against it by the Defendant. Trial will take place in May 2014.

In **Greenwood & Ors v Goodwin & Ors**, the ongoing group litigation relating to the £12bn rights issue undertaken by

RBS in 2008, Philip Marshall QC is representing the so-called "Bird & Bird Group" of claimants and David Blayney QC and Simon Hattan are representing RBS and the individual director defendants. The claim is likely to be one of the highest value claims ever to come before the English courts, with an expected value of between £3bn and £4bn.

Dominic Dowley QC has been retained by the Serious Fraud Office to defend the £300m claim brought against the SFO by the Tchenguiz brothers alleging false arrest, malicious prosecution and misfeasance in public office following the execution of search warrants and arrests in March 2011.

We have maintained our strong presence in Commercial Litigation and continue to build our reputation in Banking.

Elizabeth Jones QC, Simon Hattan and Gareth Tilley successfully appealed the decision of the BVI Commercial Court at first instance in a 5 day appeal in **Alhamrani v Alhamrani** HCVP 2012/026. The case, which involves a dispute in relation to the ownership of a valuable BVI company following a settlement agreement governed by Saudi law, will now go to the Privy Council in 2014.

Lance Ashworth QC appeared for the claimant in **Mengiste v Endowment Fund for the Rehabilitation of Tigray**, a 12 day *forum non conveniens* application. The judge was very strongly critical of the claimant's solicitors when finding against the claimant, but refused to recuse himself having invited the defendant to make a wasted costs application. The Court of Appeal overturned the judge's refusal to recuse himself on grounds of apparent bias.

Adil Mohamedbhai continues to act for the defendants in an LMAA arbitration relating to the construction of yachts. The arbitration raises complex issues of contractual construction, breach of trust, fraud and foreign law.

Lance Ashworth QC acts for a wife seeking to enforce judgment in Michigan whose husband was committed to prison for a maximum 24 months for failing to provide information in a freezing order. In **Thursfield v Thursfield** [2013] EWCA Civ 840, the Court of Appeal

upheld the committal and length of sentence, recommending a change of the rules to prevent a party who had not submitted to the committal order from appealing without permission.

Hugh Norbury QC and Robin Rathmell have been acting in **Macquarie v EPIC**, a case relating to whether a fee of approximately £4m was due under an investment agreement between the parties, raising issues of construction and estoppel by convention.

Dan McCourt Fritz acted for the respondent in **Berry Piling Systems Ltd v Sheer Projects Ltd** [2013] EWHC 347, the first reported case on permission to bring committal proceedings under CPR 32.14, successfully arguing that permission should be refused on the grounds that the evidence did not disclose a strong prima facie case of contempt, and that in any event committal proceedings would be wholly disproportionate.

Hugh Norbury QC and Dan McCourt Fritz have been acting in **Synova v Tupman**, a breach of confidence case against a private equity firm.

Lance Ashworth QC acted for Merlin Entertainments in **Cave v Chessington World of Adventures**, successfully resisting an application for an injunction to prohibit them opening a theme park based on spurious grounds of concern for the safety of the public.

...whilst dealing with the full spectrum of Property work.

Chris Stoner QC represented the Canal & River Trust in the Court of Appeal on issues relating to mooring rights in the Grand Union Canal, including important principles relating to the extent of rights of riparian land owners.

Andrew Bruce represented landlord clients in relation to a break clause dispute in respect of office premises in Sloane Square. Summary judgment was obtained in January 2013.

Nicholas Asprey has been advising a major property group on issues arising from the proposed super sewer under the Thames: issues include whether the Crown as landlord can rely on the 'no fetter' rule in answer to a claim that by consenting to the compulsory acquisition of land comprised in the lease it would be acting in breach of the covenant for quiet enjoyment.

Chris Stoner QC acted on behalf of the tenants in a landmark case on consultation requirements in respect of service charge payments, namely

Phillips v Francis [2013] 1 WLR 2343.

Jonathan Fowles acted for property developers against Natwest in a 7 day trial before Barling J. The case concerned alleged misrepresentations and estoppel against the background of the financial crisis of 2008. The parties settled shortly before closing submissions.

Nicholas Asprey acted for the claimant in proceedings under section 14 of the Trusts of Land and Appointment of Trustees Act 1996 (**Finch v Hall**) in which the Deputy Judge followed the decision in **Re Buchanan-Wollaston's Conveyance** [1939] Ch 738 which was decided under the now repealed section 30 of the Law of Property Act 1925.

Jonathan Fowles acted for BT plc in a complex, multi-million pound dilapidation claim in the TCC. The case was set down for a 10-day trial before Mr Justice Coulson following a 3-hour CMC but has now settled.

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

Serle Court members will be advising all three defendants in one of Jersey's biggest breach of trust claims of recent years, **Walker & Ors v Egerton-Vernon & Ors**, concerning a family trust settled by one of Britain's most successful industrialists of the last century. Elizabeth Jones QC, Justin Higgo, Gareth Tilley and Jonathan McDonagh are instructed for one of the former trustee defendants, with Giles Richardson and Robin Rathmell and Alan Boyle QC and Dakis Hagen having advised the other two former trustees. The case is set for trial in 2015 and is estimated to run for over 6 months.

Serle Court members also advised various parties in connection with the **Trilogy Management v YT** litigation in Jersey which concerns the proposed alteration of a charitable structure worth approximately US\$0.5bn. Robin Rathmell advised the principal trustee while Dakis Hagen and Jonathan McDonagh were instructed by another corporate trustee within the structure.

Frank Hinks QC and Tom Braithwaite acted in the Hong Kong case of **Re Nina Wang Dec'd**, concerning the Will of reputedly the richest woman in Asia. In accepting the submissions made by the Secretary of Justice and superimposing a trust/power structure on a corporate charity, the trial judge dismissed Frank's submissions on behalf of the charity as 'blinker'd' 'simplistic' and just plain wrong... The hearing in the Court of Appeal is in February 2014.

The much discussed **Tchenguiz-Imerman** divorce litigation settled in 2013, but not before generating various interlocutory judgments. In an important decision, Moylan J overrode the wishes of the Jersey court and ordered that documents generated for the purposes of a Jersey trustee's Beddoe application held by beneficiaries intervening in the English proceedings should be disclosed to him in those proceedings (**Tchenguiz-Imerman v Imerman** [2014] WTLR 145). Dakis Hagen appeared for the successful applicant.

In **UL v BK (Freezing Orders: Safeguards: Standard Examples)** [2013] EWHC 1735 (Fam) the court clarified freezing injunction principles in a case involving trusts and foundations

noting (among other things) that the presence of an offshore structure was on its own insufficient evidence of a risk of dissipation. Dakis Hagen appeared for the successful respondent.

Hugh Norbury QC and Matthew Morrison have been acting for the liquidators of two companies in the Isle of Man relating to the failure of an investment scheme known as the Foundations Program raising a number of interesting issues including whether certain assets put into the scheme for investment purposes might be held on trust for the investors in a variation on the Quistclose-type trust.

Jonathan Harris was instructed for the claimants in **SMF v Butterfield**, a high value dispute as to the contractual liability of a Bermuda trust to fund the construction of an opera house in Lucerne which went to trial in Bermuda at the end of 2013.

Dakis Hagen appeared for the successful applicant in **CR v MZ** [2013] EWHC 295, a sham trust/forgery case relating to the ownership of a substantial London property and its holding company.

Dominic Dowley QC and Jonathan Harris were instructed by the claimant in **Earl of Durham v Lady Lucinda Lambton & Ors** in a dispute between siblings as to the succession to their father's estate. The case has been widely covered in the national press.

Andrew Bruce successfully represented the defendants in **Ullah v Ullah** [2013] EWHC 2296 (Ch), a substantial High Court claim brought by a family member seeking an interest in a portfolio of properties based upon a constructive trust. One of the clients (a criminal solicitor) remarked that his advocacy was "better than Bill Clegg's and Mike Mansfield's"!

In **Singh v Singh**, Daniel Lightman represented Jasminder Singh, the Chairman and Chief Executive of Edwardian Hotels Ltd, the defendant to a constructive trust claim in which his father alleged that all property he had acquired was owned jointly by his father and brother pursuant to the principles of Joint Hindu Property and the Mitakshara. Judgment is expected after a five week trial in November and December 2013 early in 2014.

In addition to those already mentioned we have been involved in the following Company cases.

In **Sukhoruchkin v Van Bekestein** [2013] EWHC 1993 (Ch), Daniel Lightman, Paul Adams and Thomas Elias were successful in having a freezing order and proprietary injunction set aside by Morgan J on the basis that, in light of (among other things) the rule against shareholders recovering reflective loss, the claimants did not have a good arguable case and it was not just and convenient in all the circumstances to continue the injunction. The claimants' appeal against Morgan J's decision will be heard by the Court of Appeal in March 2014.

Lance Ashworth QC and Timothy Collingwood represented opposing sides in a section 994 petition regarding an inherited business said to be worth in excess of £32m. The case settled on the eve of trial.

Ruth den Besten and Gareth Tilley appeared in **Re Quiet Moments Ltd** [2013] EWHC 3806 (Ch), a 3-way shareholder dispute in which the

minority alleged the majority had misappropriated their shareholding in a property development company. A "just and equitable" winding up petition heard at the same time was dismissed for lack of "clean hands".

Timothy Collingwood acted in **Euro Value Investment Company I v Greater Europe Deep Value Fund II Ltd** in Jersey ([2013] JRC 004; [2012] JRC 146), a case concerning the winding up of a substantial closed-ended investment fund on the just and equitable ground on the basis of loss of substratum.

Daniel Lightman represented the defendant in **Eckerle v Wickeder Westfalenstahl GmbH** [2013] 3 WLR 1316. He successfully applied to strike out the proceedings on the basis, upheld by Norris J, that only a registered member (and not a holder of shares through a nominee) has *locus standi* to apply under section 98 of the Companies Act 2006 for an order



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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cancelling a resolution for re-registration of a plc as a private company.

Timothy Collingwood appeared in **Moxon v Litchfield**; the case concerned an unfair prejudice petition following the dismissal and required resignation of a director in the company (who was a minority shareholder) for alleged gross misconduct. The Court found against

the dismissed director in respect of the allegations of breach of duty made against him. Consequently, it held that the dismissed director was bound by his bargain and that the operation of compulsory transfer provisions under the Articles of Association and a Shareholders' Agreement entitled the remaining shareholders to acquire his shares at par.

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

Khawar Qureshi QC and Jennifer Haywood have been acting for the Republic of Djibouti in a claim worth over US\$100m against the former chairman of the Ports and Free Zone authority. In 2013 they obtained a US\$111m worldwide freezing order supported by further orders in several overseas jurisdictions. The trial has been set down for late spring 2015.

Jonathan McDonagh acted for the Urumov and Pinaev defendants, in **Otkritie Bank v Urumov et al**, a claim for more than \$170m in an alleged Russian banking fraud. The case was the subject of considerable international media attention, and was heard over the course of 12 weeks in the Commercial Court. In addition to the usual issues arising from a civil fraud action, this case raised questions of international private law, foreign law, privilege and the doctrine of *ex turpi causa*. Jonathan Adkin QC was involved at earlier stages in the proceedings. Hugh Norbury QC also acted for a third party in relation to the claim at an early stage of the proceedings.

David Drake appeared for the English NHS in **Secretary of State for Health & Ors v Servier Laboratories Ltd**

[2013] EWCA Civ 1234, in which the Court of Appeal rejected the defendants' attempt to rely on a French criminal statute in order to resist providing further information and disclosure.

Hugh Norbury QC, Justin Higgo and Dan McCourt Fritz have been acting for Coca Cola Enterprises against a number of participants in a kickback scheme involving at least one senior employee and a number of CCE's contractors in Europe. A considerable proportion of the total lost has now been recovered as a result of the litigation.

Philip Jones QC, Daniel Lightman and Adil Mohamedbhai act for the defendants in **NCA v Perry & Ors**, a substantial Part 5 POCA civil recovery claim raising (among other things) complex insurance, foreign law and tracing issues. In October 2013, a deposition of one of defendants took place before Popplewell J in Israel.

Hugh Norbury QC led James Mather in a case relating to Celtic Energy Ltd, which owns South Wales' principal remaining coal mine, in relation to a series of transactions by which Celtic divested itself of its interest in the mines to various offshore companies owned and run by fiduciaries.

Finally, our members have been involved in cases covering many other of our broad Commercial Chancery practice areas including Intellectual Property, Sport, EU Law and Competition.

Michael Edenborough QC appeared *pro bono publico* on behalf of the successful appellant in **Golden Balls Ltd v OHIM (Intra-Presso intervening)**, cases T-437/11 and T-448/11, two related appeals to the General Court on whether "Golden Balls" was confusingly similar to "Ballon D'Or".

Chris Stoner QC successfully represented a prominent footballer in the Court of Arbitration for Sport in Switzerland in upholding a substantial payment awarded by the FIFA Dispute Resolution Chamber.

Michael Edenborough QC appeared in **Re Chartered Institute of Patent Attorney's Trade Mark Application** [2013] RPC 20, the final instalment of the **IP Translator** case on how trade mark specifications should be construed.

Conor Quigley QC appeared in **R v Taylor & Wood** [2013] EWCA Crim 1151 which concerned the issue of whether recovery of excise duty from two or more co-defendants severally through the application of the Proceeds of Crime Act constituted a disproportionate penalty contrary to the European Convention of Human Rights.

Michael Edenborough QC appeared in **Utopia Tableware Ltd v BBP Marketing Ltd** [2013] EWPC 28, a reference from the Patents County Court to request the Attorney General to bring proceedings for contempt against two witnesses who had given false evidence on behalf of the claimant.

Conor Quigley QC appeared in **Shannon LNG v Commission for Energy Regulation** [2013] IEHC 561 which concerned the proper interpretation of the EU Gas Regulation in respect of tariffs for use of gas transmission infrastructure.

Suzanne Rab advised a European energy supplier on competition law claims in an ICC arbitration relating to a long term gas contract with a major State-owned energy company. The case raised issues under EU and national competition law in connection with abuse of dominance. The energy sector remains a high profile enforcement priority for the EU's competition regulators. Similar issues are also subject to a pending European Commission investigation against Gazprom.