



serle court

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serle court in 2017

...whilst we continue to be instructed in significant company, insolvency and partnership disputes.

Timothy Collingwood appeared in *Burberry Group plc v Fox-Davies* (Court of Appeal) [2017] BCC 387, the leading case on access to the register of members of a company, the meaning of the statutory test of "proper purpose" and the formal requirements for a valid request.

Philip Jones QC is acting for the Secretary of State for Business, Energy and Industrial Strategy in relation to the public interest winding up proceedings that have been brought against the Store First group of companies. It has received a considerable amount of publicity from the media and the Secretary of State is seeking to wind the companies up.

Dakis Hagen QC and Charlotte Beynon appeared in *Officeserve v Anthony-Mike* [2017] BPIR 1291 the first decision to consider whether a compromise agreement entered into by a company with a director after the presentation of a winding up petition is void as a 'disposition' within the meaning of section 127 of the Insolvency Act 1986.

John Machell QC and Jennifer Haywood acted for the appellants in *Flanagan v Liontrust Investment Partners LLP* [2017] EWCA Civ 985, an appeal concerning the validity of LLP retirement notices.

Philip Jones QC successfully acted in two separate applications for winding up in the BVI High Court. Both cases are proceeding to appeal and Philip Jones QC will appear before the Eastern Caribbean Court of Appeal in 2018.

Daniel Lightman QC continues to act for Jasminder Singh, the chief executive of a prominent hotel group, who is one of the respondents to an unfair prejudice petition, the seven-week trial of which is due to commence in January 2018. The decision of Morgan J in *Re Edwardian Group Ltd* [2017] EWHC 2805 (Ch) added a gloss to the test to be applied when considering whether documents benefit from legal

advice privilege on the basis that they reveal the substance of the legal advice given.

Kathryn Purkis acted in *O'Keefe v Caner* [2017] EWHC 1105 which established (though as a matter of fact in English proceedings) the prescription period for breaches of fiduciary duty under the Companies (Jersey) Law 1991.

Ruth den Besten has been instructed for the administrators of the BHS Group, securing the winding up of Retail Acquisitions Ltd, the vehicle used to purchase BHS for £1, on a contested petition resisted by Dominic Chappell.

In *Re Infund LLP* John Machell QC and Dan McCourt Fritz act for the defendants to a claim brought by Grupo Mexico seeking to avoid the restoration of Infund to the Register of Companies. The underlying purpose of the claim is to prevent Infund from pursuing proceedings in Mexico in which it claims a substantial shareholding in Grupo Mexico. The claim is listed for a two-week trial in April 2018.

Timothy Collingwood successfully represented the claimants at the trial of a derivative claim for breach of duty and diversion of opportunity, together with related personal claims concerning a property joint venture (*Cullen Investments Ltd v Brown*) [2017] EWHC 1586 (Ch) and subsequently defeated an application for relief from liability under section 1157 CA 2006.

John Machell QC and Adil Mohamedbhai acted for the successful claimant in *Campbell v Campbell* [2017] EWHC 182 (Ch), a partnership case concerning (*inter alia*) the scope of the court's *Syfers v Syfers* jurisdiction.

Philip Marshall QC and Ruth den Besten appeared for Anthony Wollenberg in proceedings relating to one of the UK's largest casinos. The matter, which raises important questions as to the extent of a director's entitlement to company documentation, was the subject of an expedited appeal in November.

We have covered a broad range of Property and Charities work

Richard Wilson QC appeared for the first defendant in *Gaspar v Zaleski* a case involving questions of beneficial ownership of a property in London, and raising questions concerning the construction of a trust deed, *Stack v Dowden* constructive trusts and equitable accounting.

Will Henderson appeared in *Children's Investment Fund Foundation v Attorney General* [2017] EWHC 1379 (Ch). The case is going to the Court of Appeal on the issue of whether the members of a charitable company owed fiduciary duties to the company such that they could be directed by the court how to vote.

Christopher Stoner QC acted for the Canal & River Trust in the Court of Appeal in a case where the issue was whether the summary approach to Article 8 defences sanctioned by the Supreme Court in housing cases also

applied where the Trust were seeking to remove an unlicensed vessel from an inland waterway: *Canal & River Trust v Jones* [2017] 3 WLR 516.

Andrew Bruce successfully relied upon section 84(1)(aa) to modify restrictive covenants which limited residential development by requiring consent and limiting housing density in *Hennessey v Kent* [2017] UKUT 243 (LC).

In *Poon Tip v Lawrence* [2017] UKFTT 0547 (PC) Jonathan Fowles acted for the applicant in successfully striking out parts of the respondent's case in defence of claim for title by adverse possession under Schedule 6, LRA. The judgment addressed the test for strike-out under the Property Chamber rules and the interpretation of the notice provisions in relation to Schedule 6.

person and in so doing Matthew secured a £22,500 pro bono costs order in favour of the Access to Justice Foundation. He is shortly to be named as their first Pro Bono Costs Champion.



In 2017 Serle Court has again been involved in some of the most substantial and interesting cases in the chancery and commercial field across a broad range of practice areas, many before the higher courts including the Supreme Court and Privy Council. This Annual Review highlights a variety of these cases; many well-known and from a range of jurisdictions. I hope you will find the review interesting.

Alan Boyle QC Head of Chambers

In 2017 Serle Court was involved in some very large and high-profile cases, and in a number of precedent-setting cases in the Court of Appeal, Supreme Court, and Privy Council.

Elizabeth Jones QC, Justin Higgo, Gareth Tilley, Paul Adams and Oliver Jones represented New Zealand businessman Sir Owen Glenn and his company Kea Investments Ltd in the combined trials of *Glenn v Watson, Kea Investments Ltd v Novatrust Ltd* and *Novatrust Ltd v Kea Investments Ltd*. The 12-week hearing before Nugee J was of fraudulent misrepresentation, breach of fiduciary duty and derivative claims in the context of a property joint venture conducted through a BVI vehicle. Following a settlement involving rescission of c.£130m worth of loan agreements, judgment is awaited on the balance of the claims.

Ruth den Besten secured a successful outcome for *Lehman Brothers Ltd (LBL)* in the Supreme Court hearing of *Waterfall I*: a pivotal decision on the availability and priority of payments out in administration ([2017] UKSC 38). The decision facilitated the settlement of *Waterfall III*, in which both Philip Marshall QC and Ruth den Besten appeared, with the "momentous decision" of Hildyard J ([2017] EWHC 2032 (Ch)) and a return of 100p in the pound to LBL creditors.

Kathryn Purkis, Giles Richardson and James Brightwell acted in the Privy Council case of *Investec v Glenalla*, an appeal from multiple decisions in Guernsey involving a range of issues relating to the meaning and effect of a provision of the Trusts (Jersey) Law 1984 and trustee liability.

In July 2017 the widely reported financial remedy proceedings in the *Hagen v Hagen* divorce reached the High Court. The case (which settled mid-trial and remains subject to reporting restrictions) involved the family behind Viking River Cruises. Dakis Hagen QC and Charlotte Beynon acted for the husband, Alan Boyle QC and Nicholas Harrison represented the adult daughter, and Emma Hargreaves appeared for another interested party. Jonathan Adkin QC and Adil Mohamedbhai had appeared for a corporate party at an earlier stage of the litigation.

Richard Wilson QC continues to act for the claimants in the BVI case of *Khan v Gany Holdings*, appearing in the BVI Court of Appeal to successfully resist the staying of the Court's order pending an appeal to the Privy Council listed for 2018, and in which he will appear together with Alan Boyle QC and Zahler Bryan.

Philip Marshall QC and Matthew Morrison successfully defended the Independent Directors of Carlyle Capital Corporation (CCC) in respect of liquidator claims seeking

US\$1bn for alleged breaches of fiduciary duty and wrongful trading in connection with CCC's collapse at the height of the credit-crunch.

Philip Jones QC appeared in the Cayman Islands Court of Appeal in *Shanda Games*, one of China's largest computer games companies which delisted from the NYSE on a merger taking place. This was the first case to reach the Court of Appeal in relation to section 238 of the Cayman Companies Law, and involves an important point of principle as to whether a minority discount should be applied to the valuation of shares of dissenting shareholders to a merger. Judgment is awaited, and the matter is expected to reach the Privy Council.

Philip Marshall QC, James Mather and Sophia Hurst continued to represent Mikhail Shlosberg in connection with a conspiracy claim relating to the allegedly unlawful diversion of a receivable said to be worth in excess of US\$170m, which is due to be tried in 2018. Following from the determinations in 2017 by the High Court and Court of Appeal that Mr Shlosberg retained rights of privilege in documents notwithstanding his bankruptcy, a further judgment of Arnold J in 2017 gave important guidance regarding the restrictions on use of documents compulsorily obtained by officeholders under the Insolvency Act. Hugh Norbury QC and Sophie Holcombe act for Ms Prokofyeva in connected claims for dishonest assistance and/or relief relating to alleged dispositions at an undervalue and/or preferences (*Webinvest v Prokofyeva and Ors*).

Dominic Dowley QC, Justin Higgo and Dan McCourt Fritz continued to act for the claimants in the long-running saga in *Fiona Trust v Privalov*, the most recent chapter of which was the appeal from the order of Males J awarding certain defendants \$59.8m in respect of their claims for loss allegedly caused by freezing orders (see [2017] 2 All ER 570). The appeal was heard in October; judgment is awaited.

Constance McDonnell was junior counsel for the respondent in *Ilott v The Blue Cross* [2017] UKSC 17, a landmark case in the Supreme Court and the first claim under the Inheritance (Provision for Family and Dependents) Act 1975 ever to be considered at that level. 7 Justices of the Supreme Court considered the criteria to be assessed in such claims, and their judgment in March 2017 attracted widespread national press headlines.

We remain at the forefront of Commercial Litigation and Civil Fraud work

Philip Marshall QC and James Mather acted for Constantin Medien in a claim against Bayerische Landesbank for US\$130m arising out of the sale in 2006 of the bank's stake in Formula One under the influence of a bribe paid to its senior official.

David Blayney QC, Simon Hattan, Zahler Bryan and Adrian de Froment acted for the RBS Group and its former directors defending actions brought by shareholder and investor groups regarding RBS's £12bn rights issue in 2008. These actions, brought under the Financial Services and Markets Act 2000, settled shortly before the trial scheduled to start in May 2017.

In **Business Energy Solutions v Scrivener & Ors** Philip Marshall QC, Matthew Morrison and Gregor Hogan act for the claimant in an unlawful means conspiracy claim against defendants who are alleged to have induced BES's customers to breach their contractual obligations and otherwise interfered unlawfully in BES's business. Philip Marshall QC, Dan McCourt Fritz and Zahler Bryan acted in a related breach of confidence claim against one of BES's former employees.

In **Accident Exchange v McLean & Ors**, Hugh Norbury QC, Dan McCourt Fritz and Charlotte Beynon continue to act for Keoghs, one of three firms of solicitors joined to Accident Exchange's £130m conspiracy claim relating to Autofocus' "perjury on an industrial scale". The claim – which gave rise to a heavy application as to the nature and scope of the iniquity exception heard in November – is listed for a 14-week trial commencing in October 2018.

Jonathan Adkin QC and Ruth den Besten continue to represent Igor Kolomoisky, a Ukrainian oligarch, in substantial Commercial Court proceedings brought by Tatneft, an oil producer part owned by the Russian state.

Hugh Norbury QC and Adil Mohamedbhai are acting for a corporate guarantor in the latest instalment of the long-running saga of the attempts by Dubai Islamic Bank to recover over US\$400m arising out of the settlement of a fraud against the bank. The case – **Dubai Islamic Bank v Oiax Ltd** - raises novel issues of the effect of foreign illegality on an English law contract.

Lance Ashworth QC and Matthew Morrison represented the first defendant, Mr Rosser, in **Instant Access Properties v Rosser**, a Chancery Division claim against 7 defendants, including a firm of solicitors, for fraudulent trading, in which the

claimants claimed £35m. The trial lasted for 5 weeks and judgment is currently awaited.

In **Wright v Rowland** Philip Marshall QC and Dan McCourt Fritz (together with Professor Burrows) act for the appellant, challenging the dismissal of his *quantum meruit* claim in respect of services he provided in sourcing, introducing and assisting to exploit the opportunity to acquire Kaupthing Bank Luxembourg SA (see [2017] EWHC 2478 (Comm)).

Elizabeth Jones QC and Gareth Tilley acted in a Japanese arbitration relating to a conspiracy claim against an original equipment manufacturer.

Lance Ashworth QC and Sophia Hurst represented the thirteenth to sixteenth defendants in **BFS Group v Foley**, a bribery and fraudulent misrepresentation claim in which the sums claimed from those defendants are approximately £8m. They were successful in defeating the summary judgment application on part of the claim [2017] EWHC 2799 (QB). The trial is listed for 6 weeks in June 2018.

Philip Marshall QC and Ruth den Besten were instructed by Barclay Pharmaceutical Ltd in large scale international enforcement proceedings against a thrice convicted fraudster.

Sophie Holcombe is instructed as junior counsel on behalf of the former Prime Minister of Georgia and his family as beneficiaries of two trusts which suffered multi-million dollar losses as a result of fraud perpetrated by a Swiss Bank (**Bidzina Ivanishvili & Ors v Credit Suisse & Ors**). Litigation has been commenced in New Zealand, Bermuda and Singapore.

James Weale acted for the successful claimant in a \$100m LCIA arbitration arising out of a valuable real estate development opportunity in central Moscow. The arbitration is now the subject of three separate challenges which have been listed for trial in 2018.

Lance Ashworth QC and Dan McCourt Fritz successfully represented the claimants in **Bank Alkhair BSC v Al Refai** in the Commercial Court securing judgment for recognition of a Bahraini judgment and defeating a US\$25m counterclaim.

Matthew Morrison is acting for a potential beneficiary of a Jersey discretionary trust which, among other things, is alleged to contain the traceable proceeds of a US\$500m fraud perpetrated on Dubai Islamic Bank. At present the parties are locked in a long-running interlocutory battle concerning the application of Sharia law principles.

General Court for Golden Balls (T-8/17) and an unusual taxation of costs (T-2/16 DEP Pret a Manger).

Christopher Stoner QC advised on two matters before the Court of Arbitration for Sport and also advised upon and acted in a funding appeal.

Ruth den Besten acts for international footballer Marouane Fellaini in a sponsorship dispute with New Balance.

John Machell QC chaired a Premier League commission which considered a complaint into Hull City's ticketing policy.

Our presence in domestic and offshore trusts, probate and private client cases goes from strength to strength

Richard Wilson QC and James Weale appeared in the High Court for the successful claimants in **Henchley v Thompson**, which raised interesting questions about whether a trustee owed an absolute duty to provide accounts and the form that a trustee's account should take.

Davidson v Davidson was a high-profile family trust dispute over the ownership of more than £17m of jewellery, paintings and objets d'art. Justin Higgs and Zahler Bryan acted for parents claiming in conversion for the return of the chattels from their children, represented by Giles Richardson and Sophia Hurst. The case settled shortly before trial.

In **Moreno de la Hija v Lee** [2017] EWHC 634 (Ch) Jonathan Fowles, led by Jessica Simor QC of Matrix Chambers, acted for the widow and estate of the famous late actor, Sir Christopher Lee, in successfully resisting the lifting of a stay of the enforcement of a European Enforcement Order in respect of a judgment being challenged in the Spanish courts.

Hugh Norbury QC, Justin Higgs and Emma Hargreaves are acting for the claimant in **Kassam v Nurmahomed & Anor**, a case involving an attempt to set aside a settlement agreement relating to the claimant's late husband's estate in the United Kingdom and in Malawi on grounds of undue influence arising *inter alia* from the cultural background of the parties.

Richard Wilson QC continues to act for Mrs Dawson-Damer in ongoing litigation over a substantial Bahamian trust. During 2017 there has been judgment in the landmark English case of **Dawson-Damer v Taylor Wessing**, a leading case on disclosure to beneficiaries.

Frank Hinks QC appeared in **Re V & W Trust** in the Commercial Court in the BVI and successfully obtained the appointment of a receiver and proprietary injunctions to protect a trust fund from dissipation where the trust deed had allegedly been fabricated after the death of the settlor.

Andrew Bruce was instructed by Urs Schwarzenbach, a Swiss financier and celebrated art-collector, in connection with his art collection.

The appeal in **Barker v Baxendale Walker**, a professional negligence action concerning a fiscally ineffective employee benefit trust was heard by the Court of Appeal in October. The judgment is likely to provide clarity on the meaning of section 28(4) of the Inheritance Tax Act 1984. Dakis Hagen QC was among the counsel who appeared for the appellant and was assisted by Oliver Jones and Eleni Dinenis.

Will Henderson appeared in **A v D** [2017] EWCOP 8 which addressed the relationship between compromise in the Chancery Division and the Court of Protection's jurisdiction to order the making of a statutory will giving effect to that compromise.

Various members of chambers acted in the financial aspects of the **Aziz v Aziz** divorce litigation which hit the national press in October. Prof Jonathan Harris QC (Hon.), Dakis Hagen QC and James Weale acted for the wife and Richard

Wilson QC acted for the husband.

Dakis Hagen QC was among the counsel appearing for the applicant wife in **AAZ v BBZ** [2017] 2 FCR 415 where Haddon-Cave J had granted the applicant the largest reported financial award on a divorce in English history (£453m). The case involved (among other things) a Bermuda trust and a network of Manx and Panamanian companies.

Dominic Dowley QC and Emma Hargreaves have been acting for a party caught up in the well-publicised attempts by former model Christina Estrada to enforce the "record" multi-million pound award obtained by her against the late Walid Juffali following financial remedy proceedings in 2016.

Philip Jones QC has been heavily involved in the family dispute relating to the Huge Surplus Trust. This is a BVI trust set up by a wealthy Hong Kong businessman. Following his death there is a dispute between his first and second wife and their respective children. There is a substantial hearing due in the BVI in March 2018.

Constance McDonnell is junior counsel for the administrators of an English estate who made a successful *Beddoe* application in 2017 in relation to claims (which are now ongoing) to set aside gifts made by the deceased to two employees as a result of their undue influence.

Richard Wilson QC, Prof Jonathan Harris QC (Hon.) and James Weale appeared in the Gibraltar Supreme Court and Court of Appeal for various parties in **Line Trust Corporation v W & Ors**, in which a trustee applied for declarations as to the validity of deeds excluding beneficiaries from benefit under a trust. The former beneficiary sought to challenge the validity of the deeds of exclusion in English matrimonial proceedings and asserted that the Gibraltar Court did not have jurisdiction to hear the trustee's application.

In **Miles v Miles** Jonathan Fowles acted successfully for the appellant on an appeal concerned with the correct approach to the divorce cross-check and testamentary wishes under the Inheritance (Provision for Family and Dependents) Act 1975.

Constance McDonnell acted for the settlor of a trust in **RBC Trustees (CI) Ltd v Stubbs** [2017] EWHC 180 (Ch) and presented opposing arguments in an otherwise consensual application by trustees for rectification or rescission of a deed of revocation and new appointment. Richard Wilson QC acted for the claimant.

Richard Wilson QC and James Mather act for a prominent family involved in an ongoing dispute over a collection of historically significant and valuable chattels. The case raises issues of mutual wills and proprietary estoppel. Constance McDonnell acts for the defendant.

John Machell QC appeared before Chief Justice Smellie in a *Beddoe* application in Cayman that raised an issue as to the approach if a successful claim would exhaust the trust assets.

...and our Intellectual Property and Sports practices have remained as active as ever.

Michael Edenborough QC has been involved in a wide range of IP cases, for example the trade mark dispute involving Toblerone and Aldi's Twin Peaks chocolate bar, a copyright dispute concerning the Kate Moss Vogue cover tribute to David Bowie's Aladdin Sane album cover, and a moral rights case involving the street artist Stig and his work Complicated painted on the sides of two 40' shipping containers.

Michael Edenborough QC has also been involved in five new EU trade mark appeals including the second time to the