

Profile: Commercial Disputes

Experience and Expertise

Oliver's practice includes matters with a commercial flavour, including joint ventures in relation to commercial property and shares.

In recent years, Oliver has gained substantial experience in civil fraud and asset recovery, including breaches of trust/fiduciary duties, accounts, asset tracing and proprietary remedies. His experience includes seeking injunctive relief.

Oliver regularly acts in relation to business and commercial disputes, including:

- General contractual and finance disputes;
- Sale and purchase agreements, and breach of warranties claims;
- The validity and enforcement of guarantees and indemnities;
- Recovery of commercial assets.

Oliver also acts in relation to the breakdown and dissolution of companies and partnerships, including shareholder and director disputes, unfair prejudice petitions and partnership accounts.

Cases and Work of Note

- *Ong v Ping* [2017] EWCA Civ 2069. Acting (with Senior Counsel) on behalf of various parties who, in the context of bankruptcy proceedings, sought to set aside a number of judgments of the High Court which were alleged to have been obtained by fraud. The issues included whether a valid Jersey law trust was created in respect of a house in circumstances where the executed trust instrument had not specified any trust fund and, if so, whether its existence was deliberately concealed from the court. Oliver succeeded at first instance (see [2015] EWHC 1742 (Morgan J)); and related and consequential reports: LTL 24/6/2015; [2015] 6 Costs LR 997 (question of costs of instructing two sets of solicitors); & [2015] EWHC 3766). The trust issue was upheld on appeal (Leveson, Underhill LJ & Sir Colin Rimer), the Court of Appeal considering that, as a matter of construction, having regard to the whole body of antecedent correspondence, an effective trust of the house had been declared by conduct when the trust instrument was executed. Subject to permission to appeal to the Supreme Court on the trust question, on-going questions include the removal of the trustee, accounts and recovery of assets, including freezing injunctions, as to which there are multi-jurisdictional (Jersey and Singapore) issues.
- *P2P E Logistics v Tibbles* [2017]. Oliver successfully defended a claim following a 2-day trial for recovery of money under an alleged guarantee. The court found that the defendant did not intend to create legal relations, and the alleged guarantee was unsupported by consideration.
- *Boulton & Ors v Condliffe* [2015 -]. High Court. Acted for numerous claimants in a complex piece of litigation concerning the beneficial interest in a commercial property in Cornwall, accounts for and recoveries of monies variously held on trust / subject to a partnership and successful applications for injunctive relief and consolidation;
- *Re Boyle Deceased* (2015). High Court. Acting (with leading Counsel) in respect of a c£6m estate, seeking to set aside various lifetime transactions for breach of fiduciary duties, and recover misappropriated assets for the benefit of the estate;
- *Simms v Phillips* [2014-15]. Acted for Defendant in relation to claim for beneficial share of a development property, which had failed to complete as a result of a fraud. Issues included whether purchase monies had been provided through an overdraft facility / personal guarantee and an intention to share the beneficial interest was sufficiently evinced or could be vitiated by reason of the theft of the development funds;
- *Walters v Burton* [2015]. Acted for the claimant in possession proceedings against the defendants' property pursuant to a charge securing monies due under a guarantee for payment of the sale price of the claimant's sausage manufacturing business. The issue was whether the guarantee was invalid by reason of presumed

undue influence and a breach of warranties claim by the purchaser (and whether the guarantor was entitled to set up that claim against the claim to possession). After a 3 day trial, the Court found the guarantee was unimpeachable. Subject to an application for leave to appeal;

- *Bacon v Bacon* (2015). High Court (Birmingham). Instructed for the defendant to resist a highly complex claim for an account and proprietary relief in respect of alleged breach of fiduciary duties and misappropriation of funds during the course of an agency relationship. Involved intricate analysis of bank statements and financial transactions;
- *Rail Operations Development Ltd* [2014]. High Court. Acted for the petitioners in this highly acrimonious unfair prejudice petition (and cross petition) following the falling out of the company directors, together with an alleged misappropriation of the company's assets;
- *Re A Company* (2013). Instructed to advise in respect of a shareholder dispute in relation to a family run group of companies, which shares were held subject to a Guernsey Law discretionary trust. Issues included whether the appointment of shares to a member of the family were subject to a constructive trust / proprietary estoppel, and whether the appointee could otherwise be prevented from acting on the shares to the detriment of other family members;
- *Re A Company* (2012). Instructed to advise the liquidators of a Jersey company of a claim to recover the proceeds of sale of its shareholding in a third company held in escrow. The issue was how the monies were held and for what purpose, and whether they could be retained for the purposes of meeting a cross claim;
- *Bentley v Cobra* [2012] High Court. Acted for defendant in seeking to resist a mandatory injunction requiring a manufacturer to supply parts to a motor vehicle company;
- *CD Rentals* (2012). Acted for claimant in seeking return of balers and compactors finance lease agreement;
- *Asset Co Plc* [2011]. High Court. Acted for a former director who petitioned for the winding up of the company (which owned and managed fire engines for the LFB). The debt was disputed, the question being whether the company should have the benefit of an injunction to restrain the petitions (before Morgan J), and costs (before Registrar Baister);
- *Lex Wealth Management Ltd v Giannotti* [2011] EWCA Civ 1341. Instructed for the petitioner. CoA revisited the threshold test for showing that a debt in winding up proceedings was disputed on substantial grounds. The matter concerned the interpretation of an FSA drafted deed poll entered into by the applicant's directors in respect of undertakings to meet the debts of a previous company;
- *Atlantis v Orion* (2010). High Court. Acted for defendant in a dispute between 2 medical recruitment consultancies whose collaborative relationship broke down. Question was whether their contract had been repudiated by the parties' conduct and lawfully terminated;
- *Stratford v Trump* [2009]. Central London County Court. Acted for claimant to recover proceeds of shares held by the defendant on joint venture trust;
- *Credit Suisse v NATIXIS* (2009). Advised (with leading Counsel) in relation to liability under a IDSA credit default swap;
- *Canada Commercial Corp v Gov of Trinidad & Tobago* (2009). Advised on whether a contract for the provision of oncology services had been repudiated;
- *NATIXIS v WestLB & ors* [2007-8] Commercial Court. Instructed (with leading Counsel) on behalf of an investment bank in a long running and high value (£200m) claim in negligence and/or fraud against an arranger, lead manager and private equity firm (Nomura) in relation to the failed Box Clever securitisation;
- *Tasmanian Aboriginal Centre v Natural History Museum* [2007] High Court. Instructed for the claimants seeking repatriation of human remains held by the defendant. The case settled following mediation (involving Lord Woolf);
- *Bakwin v Sotheby's & ors* [2006] High Court (Stanley Burton J). Acted for an American citizen in a successful claim for the return of highly valuable paintings (including a Cezanne) stolen from his home, which had passed through various hands before ending up at Sotheby's for sale. Issues included the validity of an arbitration clause and service on a Panamanian company