

Jon Colclough

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Practice Overview

Jon is a commercial chancery practitioner, who specialises in insolvency and company matters.

His recent cases include *Azuonye v Kent* [2018] EWHC 2766 (Ch) (bankruptcy; income payments orders; provable debts) *Evans v Carter* [2017] EWHC 2163 (Ch) (unjust enrichment; bankruptcy; the rule in ex parte James); *Dinglis v Dinglis* [2017] EWHC 2099 (Ch) (directors' duties; agency; unlawful distributions to shareholders) and *Re Somaia* [2017] EWHC 2554 (QB) (trusts; tainted gifts under the criminal confiscation regime).

Jon previously worked for the Boston Consulting Group and the Financial Conduct Authority. He subsequently re-trained as a barrister and was awarded Lincoln's Inn 2015 "Student of the Year" for achieving the highest mark in the BPTC.

Privacy Notice

Commercial Litigation

Jon regularly acts in, and advises on, commercial disputes. Recent instructions include:

- *Dinglis v Dinglis* [2017] EWHC 2099: a claim brought by a property-owning company against its property-managing agent for an account of money wrongly retained in breach of fiduciary duty (with Mark Hubbard).
- *Bennett v Allen* (2017, High Court): a £350,000 claim for sums due pursuant to a disputed novation agreement. Jon successfully obtained summary judgment for the claimant.
- A £250,000 claim for sums due under an IT contract; and defending a counterclaim for alleged provision of defective services.
- A £400,000 claim brought against another company formerly within the same group for sums due pursuant to various oral contracts
- Advising a company on a multimillion-pound commercial loan facility containing "hidden" exit fees arising out of back-to-back derivative contracts entered into by the bank.
- Advising on contractual liability for VAT arising out of a property transaction which was wrongly thought to be the transfer of a business as a going concern.

- Defending a claim brought by a bank against a former director for sums supposedly due pursuant to a personal guarantee.

Company

Jon has a busy company law practice and has a particular expertise in relation to petitions brought pursuant to section 994 of the Companies Act 2006. Recent instructions include:

- *Dinglis v Dinglis* [2017] EWHC 2099: a claim brought by a property-owning company against its former directors for breach of duty in causing its property-managing agent to wrongly retain money in breach of fiduciary duty (with Mark Hubbard).
- Acting for the majority shareholders of a medium-sized manufacturing company following a section 994 Companies Act 2006 petition brought by a minority shareholder.
- Advising a minority shareholder as to a potential section 994 Companies Act 2006 petition following the proposed issuance of new shares (and the effective dilution of the minority).
- Advising on whether payments to a director were distributions made in accordance with Part 23 of the Companies Act 2006.
- Advising on reductions of capital and schemes of arrangement.

Insolvency

Jon has regularly acts in insolvency matters (both corporate and personal) and has particular expertise in claims against directors for breach of duty / misfeasance, wrongful and fraudulent trading, ultra vires distributions, transactions at an undervalue and preferences. Recent instructions include:

- *Azuonye v Kent* [2018] EWHC 2766 (Ch): successfully acted for the trustee in bankruptcy who argued that future obligations under an income payments order (section 310 Insolvency Act 1986) are not provable in a subsequent bankruptcy.
- *Evans v Carter* [2017] EWHC 2163 (Ch): defending a possession claim brought by a trustee in bankruptcy on the grounds that the bankrupt's interest in real property had re-vested in her as a result of unjust enrichment and pursuant to the so-called rule in *ex parte James*.
- *Re S. Simon & Co Limited* (2016, High Court): acting for the company's liquidators in a £12m wrongful trading claim brought against two former directors (assisting James Bailey).
- Acting for a trustee in bankruptcy in a section 339 Insolvency Act 1986 (transaction at an undervalue) claim against a bankrupt's spouse.
- Advising as to potential claims against directors for sums paid into tax schemes, including employee benefit trusts.
- Acting for a trustee in bankruptcy in a £500,000 claim against a bankrupt's former business partner pursuant to the so-called *Pallant v Morgan* equity.
- Acting for a liquidator in a breach of duty claim against a former director in relation to payments of over £100,000.
- Advising on the scope of a bankrupt's privilege following *Leeds v Lemos* [2017] EWHC 1825 (Ch).
- Advising a director as to the merits of an intimated claim for breach of fiduciary duty where certain assets of the company were sold to a company of which the director was sole shareholder / director.
- Advising a trustee in bankruptcy on a £600,000 proof of debt lodged by a liquidator of a company, the debt

apparently arising out of a wrongful trading claim the liquidator was considering bringing against the bankrupt.

- Advising as to the operation of the Insolvent Partnerships Order 1994.
- Advising as to the vesting of a bankrupt barrister's book debts; and obtaining an income payments order.

Regulatory and Business Crime

Jon is experienced in regulatory matters. He spent 3 years at the Financial Conduct Authority and, before that, was part of the team project managing the Irish banking recapitalisation programme following the EC/ECB/IMF "bailout". Recent instructions include:

- *Re Somaia* [2017] EWHC 2554 (QBD): successfully defending the former wife of a convicted fraudster from a "tainted gift" claim brought by a private prosecutor on the grounds that certain money transferred to the former wife was transferred on trust rather than as a gift (with Nigel Hood).
- Advising an invoice financing company on the scope of the FCA's regulatory perimeter.
- Advising on claims relating to the alleged mis-selling of interest rate swaps.
- Advising as to the consumer credit regime.
- Advising a start-up on the scope of the FCA's regulatory perimeter.

Cases

Name: Michel v Michel & Ors

Reference: [2019] EWHC 1378 (Ch)

Date: 10th June 2019

Court: High Court

Facts:

Justina Stewart acted for the successful respondents in a hard-fought shareholder dispute (unfair prejudice petition), *Michel v Michel* [2019] EWHC 1378 (Ch). The dispute involved numerous allegations of unfair prejudice in the context of a family-owned and controlled company, with the allegations spanning many years.

Chief ICC Judge Briggs found decisively in favour of the respondents, concluding that "the evidence in my view is overwhelming against a finding that it would be correct to characterise the removal of [the Petitioner] as unfair and prejudicial".

Justina played a highly pro-active role in preparation for trial, analysing thousands of pages of documents and playing a key role in the preparation of numerous witness statements (assisted by Jon Colclough), before representing the respondents for 7 of the 15 days of trial (the trial going part-heard).

[Click here for the judgment.](#)

Judge: Chief ICC Judge Briggs

Comment:

The decision highlights a number of points:

Given the highly fact sensitive nature of unfair prejudice petitions, careful and forensic analysis of documentary evidence is critical, and particularly so in the context of historic allegations;
A quasi-partnership does not exist solely because a company is family run and controlled (a commonly held misconception), or solely because family members are given benefits which cannot be explained on the basis of their employment by the company;
It is important for a petitioner to establish the precise basis of any agreement, understanding or clearly established pattern of acquiescence between shareholders in support of a contention that equitable constraints arise preventing departure from the Articles of Association;
Trust and confidence between shareholders is central to the question of whether a quasi-partnership exists;
Previous purchase of company shares from minority shareholders may have significant evidential value (if a minority discount is applied, this supports a finding that there was no special quality attached to the shareholding);
The petitioner's case should be pleaded so it is clear to the respondent(s) how he is to meet a claim.

Practice Area: Company

Name: *Azuonye v Kent*

Reference: [2018] EWHC 2766 (Ch)

Date: 2nd October 2018

Court: High Court

Facts:

The Appellant bankrupt appealed against an order of a District Judge that a subsequent bankruptcy did not affect his obligations to make payments under an income payments order ("**IPO**") made pursuant to section 310 of the Insolvency Act 1986.

Judge: Mrs Justice Falk

Comment:

Jon Colclough successfully argued that future payments under an IPO are not provable in a subsequent bankruptcy: (i) first as a matter of statutory construction of the insolvency legislation; and (ii) second, pursuant to the common law rule developed in *Re Bradley-Hole (A Bankrupt)* [1995] 1 WLR 1097, *Cartwright v Cartwright* [2002] EWCA Civ 931 and *Booth v Mond* [2010] EWHC 1576 (Ch).

[View judgment here](#)

Practice Area: Insolvency

Name: *Re Somaia*

Reference: [2017] EWHC 2554 (QB)

Date: 17th October 2017

Court: High Court

Facts:

Ketan Somaia was convicted on 13 June 2014 on several counts of fraud following a private prosecution. On 12 January 2016, HHJ Hone QC made a Confiscation Order in excess of £20 million, confiscating his assets so as to pay compensation to the victim of his fraud (the victim being the Private Prosecutor in this case).

On the back of the Confiscation Order, the Private Prosecutor brought a claim against Mr Somaia's former wife ("A") seeking declarations that certain substantial payments made into a bank account in A's sole name were so-called "*tainted gifts*" to a third party and therefore caught by s. 74 of the Criminal Justice Act 1988 ("**CJA 1988**"). If the Private Prosecutor had been successful, A would have been required to pay an amount equivalent to the value of the "*tainted gifts*" to the Private Prosecutor.

After a trial the Private Prosecutor's tainted gift claim against A failed and the claim was dismissed and Restraint Orders against A were discharged.

Judge: Jefford J.

Comment:

The case turned on the meaning of "*gift*" at section 74 CJA 1988. The Private Prosecutor argued that it had an autonomous meaning and could therefore encompass any transaction that was not "*bona fide*". Nigel Hood and Jon Colclough, appearing for A, argued that "*gift*" ought to be given its ordinary legal meaning (which includes a requirement that a donee of a gift accepts that gift as such) and that, because it was accepted that A did not know of the individual payments coming into and then leaving her bank account, the payments could not be gifts as she had not accepted them. Jefford J agreed with A. The Judge found as follows.

The meaning of a "*gift*" at section 74(10) CJA 1988 is to be given its normal legal meaning. Section 74(12) CJA 1988 then expands the normal legal meaning of the word gift to include a transfer at an undervalue.

For there to be an effective gift the following elements must be present: (i) an effective transfer of property (that is a transfer of the legal and beneficial interest); (ii) an intention on behalf of the donor that the gift will not be returned to him or her (although in the context of "*tainted gifts*" he or she may have a hope and expectation that it will be); and (iii) acceptance of the gift by the donee.

The payment of various monies into A's bank account were not gifts. They were not intended by Mr Somaia to be gifts and were not accepted as gifts by A, who regarded herself as either having to provide Mr Somaia with blank cheques when he wanted them, or as obliged to comply with his instructions about getting money from her accounts. Further, it was clear from the pattern of payments in and payments out that Mr Somaia was simply using the bank account as a conduit for payments by him. The proper legal analysis was that the monies were (as A had argued) held on trust for Mr Somaia for the brief period in which they were in A's bank account.

Even if contrary to the Judge's findings the payments had been gifts, the court would have declined to exercise its discretion to take them into account as realisable property. Of great weight in this particular case was the fact that the monies themselves were not tainted by illegality.

Please see the attached Judgement below.

Practice Area: Civil Fraud