


Aidan Briggs

Called: 2009



 +44 (0) 20 7419 8000

 aidan.briggs@newsquarechambers.co.uk

Practice Overview

Aidan Briggs has established himself as a specialist advocate and advisor in traditional chancery and real property disputes. His regular trial experience in the High Court, Court of Appeal and the specialist property tribunals give him the edge in the courtroom and make him a favourite for factually complex cases. Aidan's chancery practice covers contested probate and 1975 Act claims, partnership disputes and also contentious trusts work, both on- and offshore. He is a member of ACTAPS and has been published in the New Law Journal in respect of deathbed gifts. Aidan's property practice covers all kinds of real property disputes, from commercial landlord and tenant disputes to trusts of land. He has built up specialist expertise in rural property (including agricultural tenancies) and recently spoke at the Annual Conference of the Agricultural Lawyers' Association.

Commercial Litigation

Aidan is comfortable in commercial disputes of all shapes and sizes; For example, he appeared as junior counsel in *Energenics v Hazarika* [2014] EWHC 1845 (Ch) - a five-day trial in the Chancery Division resisting claims for breach of a share purchase agreement, fraud and dishonest assistance, with parallel proceedings in Singapore. He recently appeared in *Rush Hair v Gibson-Forbes* [2016] EWHC 2589 (QB) - resisting injunction proceedings determined at a speedy trial, to enforce restrictive covenants in a hairdresser's franchise settlement agreement. Aidan is above all a pragmatic and commercially-minded advisor, able to make swift tactical decisions to get disputes resolved. His in-depth knowledge of property, insolvency and rating law allow him to take a holistic view of his clients needs and to advise accordingly. He is happiest in cases with a complex factual matrix against which to cross-examine; he is currently instructed in £2.5 million fraud proceedings arising out of the catering arrangements at the Silverstone race track.

Property

Aidan's property practice is focussed in three areas: real property disputes, particularly involving rural property; commercial landlord and tenant claims; and business rates disputes. Aidan recently addressed the annual conference of the Agricultural Lawyers' Association and is competent to advise on all aspects of rural property law, including agricultural tenancies, proprietary estoppel claims and rights of way. He recently appeared in *Re Jenkins* [2016] EWHC 426 (ch), defending one of six beneficiaries of a 400-acre estate on the Isle of Wight, making successful arguments on damages for trespass and equitable accounting.

Aidan has lectured on the interface between commercial landlord and tenant disputes and insolvency and probate law, making him more than qualified to advise on issues of forfeiture, lease renewals, disclaimer, surrender and rent as an administration expense. He also appeared in the Court of Appeal in *Rynda (UK) Ltd v Rhijnsburger* [2015] EWCA Civ 75 concerning the effects of the Drivers Jonas - Deloitte merger, and is well-versed in modern property management structures.

Business Rates is a peculiar niche in Aidan's expertise. He is retained by several London Boroughs for disputes great and small, and recently appeared in Judicial Review proceedings brought by Time inc and Norton Rose LLP against the Valuation Office Agency over backdated business rates to the value of £8 million (currently on appeal to the Court of Appeal). He has also published articles in the New Law journal on key developments in the law.

Trusts and Estates

Since appearing in the leading case of *Ashkettle v Gwinnett* [2013] EWHC 2125 (Ch), Aidan has been sought out for contested probate actions and claims under the Inheritance Act 1975 for his in-depth legal knowledge and skill as a cross-examiner, particularly where capacity is in issue.

Aidan also advises in domestic and offshore trust disputes, including applications for the removal of trustees, Beddoe applications and administration claims. He is competent to advise on the capital gains and inheritance tax consequences of most trust transactions, particularly where these overlap with variations to estates under s.144 IHTA.

Aidan has extensive experience in partnership and charity disputes, having advised a number of churches, charities and small partnerships on claims against negligent trustees, Charities Act 2006 proceedings and the ownership of charity or partnership assets.

Cases

Name: Saeed & Saeed v Ibrahim & ors

Reference: [2018] EWHC 1804 (Ch)

Date: 3rd August 2018

Court: High Court

Facts:

In 2005 Mr Saeed anticipated his wife might divorce him. He and the Defendant Mr Ibrahim together engaged in a classic 'warehousing' fraud to liquidate all of Mr and Mrs Saeed's matrimonial assets and conceal them. Signatures were forged on transfer and mortgage deeds, and Mr Ibrahim received over £590,000 in cash, which he then used to purchase properties in the names of his sons. Some properties changed hands several times, through various nominees. After all of their matrimonial assets had been hidden in this way, Mr Saeed went to Pakistan for 5 years. Upon his return, he demanded his assets back from Mr Ibrahim, who denied any knowledge of the fraud and refused to repay anything.

Mr Saeed was subsequently reconciled with his wife and together they brought proceedings to recover property, rental income and cash worth over £800,000. The proceedings were defended on the facts, but the Defendants also relied upon the defence of illegality - *ex turpi causa non oritur actio* - and limitation, since most of the fraud had occurred nearly 9 years before issue of proceedings.

Following an unsuccessful application for strike-out by the Defendants - [2018] EWHC 3 (Ch) - the matter proceeded to an 8-day trial in the Chancery Division. Giving Judgment, HHJ Simon Barker QC made scathing

comments about the First Defendant, calling him "*devious and unreliable*" - "*To describe [him] as an unimpressive witness would fall well short of the mark*" - and found that he was constructive trustee of over £290,000, and that his son and daughter-in-law were constructive trustees of a residential property.

Dealing with the illegality argument and applying the guidance from the Supreme Court in *Patel v Mirza* [2016] UKSC 42, he found that Mr Saeed was guilty of deliberate and serious illegal conduct which was central to the arrangements relied upon. However, he found that Mr Ibrahim was equally guilty. He concluded that to leave very substantial sums and property in the hands of Mr Ibrahim and his family "*would offend both policies underpinning the illegality principle and condone and produce an unjust outcome*".

As to limitation, he concluded that Mr Ibrahim, or his sons acting as his nominees, had either received the sums claimed as an express trustee, or had deliberately concealed that conduct from Mr and Mrs Saeed. He found that the knowing receipt of trust property by Mr Ibrahim as attorney for his sons amount to a breach of duty in circumstances where it was unlikely to be discovered for some time for the purposes of s.32 Limitation Act 1980.

Aidan Briggs appeared for the successful claimants, instructed by John Kenneally of Miller Rosenfalck LLP

[View judgement here](#)

Judge: HHJ Simon Barker QC

Comment:

Warehousing frauds of this kind are becoming increasingly common, as wealthy but unscrupulous actors seek to put their assets beyond the reach of creditors or spouses. What was unusual in this case was the intricate web of family connections, in a very closed traditional muslim community, used to achieve this purpose. Bags of cash were deposited at houses, powers of attorney were created in order to purchase properties in the names of family members, and bank statements in different names were used interchangeably to create a complex tracing exercise. There were also certain solicitors used on multiple occasions on interchangeable sides of the same transaction. It was also a case in which the judge concluded that the "*actual unreliability of almost everyone who gave oral evidence*" was a hamper to establishing the true facts.

This made preparation of the claim a careful forensic exercise, with a great deal of detailed scrutiny required of every document, which paid off in cross-examination.

Legally, the case is a rare example of the principles from *Patel v Mirza* [2016] UKSC 42 being applied at trial, rather than on a strike-out application, and placing some emphasis on the minority view of Lord Neuberger that in circumstances where both sides are equally culpable, the best course is to restore the status quo.

Practice Area: Trusts and Estates

Name: McEaney v Stevens & Ors

Reference: [2017] EWHC 992 (Ch)

Date: 2nd May 2017

Court: Chancery Division

Comment:

Please see the attached Judgment below.

Articles

Date	Title	Contributors
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Date	Title	Contributors
2nd May 2018	Limited Liability Trusts? (Investec Trust v Glenalla) Published In <i>New Square Chambers</i>	Aidan Briggs
15th March 2018	Case Analysis: Blenkinsop v Herbert [2017] WASCA 87 Published In <i>Trusts & Trustees - March 2018</i>	Aidan Briggs
23rd February 2018	Overlap between court's jurisdiction to strike out a claim and grant summary judgment (Saeed and another v Ibrahim and others) Published In <i>Lexis PSL - February 2018</i>	Aidan Briggs
30th October 2017	How do the intentions stack up? Published In <i>STEP Journal: Volume 25/Issue 8</i>	Aidan Briggs
14th September 2017	Law Commission consultation on reform to the law of wills Published In <i>Trusts & Trustees - September 2017</i>	Aidan Briggs
15th March 2017	E-Flash - Landmark Supreme Court decision on Inheritance Act claims Published In <i>New Square Chambers</i>	Aidan Briggs