Kristina Lukacova

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Practice Overview

Kristina has a broad commercial and chancery practice, which includes commercial litigation, company and insolvency matters, civil fraud and trusts and estates.

Kristina has a particular interest in conflict of laws and much of her work has an international element. Regularly instructed in cases involving complex issues of jurisdiction, Kristina has acted for the EU-domiciled defendant in a successful jurisdiction challenge to a claim by a Mayfair casino (*Les Ambassadeurs Club Limited v Mr* Vona [2018] EWHC 3149 (QB)) and for the claimant in a $4m contract claim before the DIFC-LCIA Tribunal, defeating a jurisdiction challenge and succeeding on the merits (as sole counsel).

Kristina's recent work includes a three-week High Court trial, in which David Warner and Kristina successfully defended the Secretary of State for Education in a £1m claim for alleged training fees (*UK Learning Academy Limited v The Secretary of State for Education* [2018] EWHC 2915 (Comm)) and a two-week trial of an unfair prejudice petition (*Dinglis v Dinglis* [2019] EWHC 1664 (Ch)) (led by Mark Hubbard).

Kristina has also recently assisted (as a member of the counsel team) the Secretary of State for Transport with his defence to Eurotunnel's challenge of Brexit-related contracts for additional ferry capacity (*Eurotunnel v Secretary of State for Transport*, now settled).

Further examples of Kristina's work are listed below.

Kristina is a contributor to Companies - Commentary, Articles (Volume 9(1) of the Encyclopaedia of Forms and Precedents) and regularly writes for LexisPSL as a member of the panel of experts on Dispute Resolution.

Commercial Litigation

Kristina is regularly instructed in a wide range of commercial disputes before the English courts and arbitral tribunals, both as sole counsel and as a member of a team. She has a particular interest in complex contract disputes, matters with an international element and cases raising issues of jurisdiction and choice of law.

Kristina's recent work includes:

- *UK Learning Academy Limited v The Secretary of State for Education* [2018] EWHC 2915 (Comm): successfully defended (led by David Warner) the Secretary of State for Education in a three-week trial of a £1m claim for alleged training fees

- *Eurotunnel v Secretary of State for Transport* (now settled): Kristina assisted the Secretary of State for Transport with his defence to Eurotunnel's challenge of Brexit-related contracts for additional ferry capacity (as a member of the counsel team)

- *Les Ambassadeurs Club Limited v Mr Vona* [2018] EWHC 3149 (QB): a successful jurisdiction challenge in the High Court in a claim by a Mayfair casino against an EU-domiciled defendant (as sole counsel)

- *Confidential DIFC-LCIA arbitration (2019):* a successful claim for over $4m raising complex issues of contract interpretation, in which Kristina defeated a jurisdiction challenge and succeeded on the merits (as sole counsel)

- Advising on novel issues of class definition and quantum arising out of proposed collective proceedings in the Competition Appeal Tribunal, with a headline figure of £1bn (with Justina Stewart)

Company

Kristina's recent instructions include:

- *Dinglis v Dinglis* [2019] EWHC 1664 (Ch): acting for the respondent in a two-week trial of an unfair prejudice petition (led by Mark Hubbard), where the court rejected the petitioner's claim that the company was a quasi-partnership and ordered the petitioner's shares to be purchased subject to a minority discount

- Advising on a potential several-million-pound claim for (inter alia) breach of fiduciary duty against a number of defendants, including company directors

- Various claims for restoration of companies to the register and for rectification of the register of members

Kristina is a contributor to Companies - Commentary, Articles (Volume 9(1) of the Encyclopaedia of Forms and

Precedents).

Insolvency

Kristina regularly appears for petitioning creditors and debtors in winding-up petitions. She has experience of applications to restrain presentation or advertisement of winding-up petitions, applications for validation orders and applications to rescind winding-up orders.

Kristina has experience of applications to set aside statutory demands and regularly appears for creditors and debtors in bankruptcy petitions.

Civil Fraud

Kristina's recent work includes a successful application to set aside default judgment in a claim based on a personal guarantee, involving allegations of forgery.

During her pupillage, Kristina assisted with the following cases:

- A fraudulent conspiracy claim made by London Borough of Brent against key former management and governors of Copland School in London

- A High Court trial dealing with an alleged tainted gift made to the former spouse of a convicted fraudster

- A will forgery case involving modern forensic techniques for detecting document fabrication

Trusts and Estates

Kristina has experience of co-ownership disputes and applications under the Trusts of Land and Appointment of Trustees Act 1996 based on constructive trusts and/or proprietary estoppel.

Kristina's recent instructions include:

- Advising on a potential several-million-pound claim for (inter alia) breach of trust, knowing receipt and dishonest assistance

- *Haynes v Andre* [2018] 3 WLUK 234: an application to remove an executor and trustee

Cases

Name: Dinglis v Dinglis, Re Dinglis Properties Ltd

Reference: [2019] EWHC 1664 (Ch) (to be reported in Butterworths Company Law Cases)

Date: 28th June 2019

Court: High Court

Facts:
The petitioner alleged he had suffered unfair prejudice as a minority shareholder at the hands of his father, who held or controlled a majority interest in what was claimed to be a "family company".

Judge: Adam Johnson QC (sitting as a Deputy High Court Judge)

Comment:
Decision:
The court rejected the petitioner's arguments that the company was a quasi-partnership and found that there was no relevant understanding that the petitioner and his sister would remain directors of the company. The court also found that the petitioner's conduct would have justified his exclusion from management and that events after that point would have caused any understandings as had been relied upon to have come to an end without unfairness to the petitioner.

Liability was established on the basis that following the petitioner's exclusion from management there had been breaches of duty by the first respondent as a director of the company, which were likely to be repeated in the context of the breakdown of family relationships. A share purchase at a discount was ordered on that basis.

Comment:
The judgment contains a valuable analysis of the allegations that need to be pleaded and proved to found a claim that a company, even when owned and run by members of a family, is a quasi-partnership and how subsequent events (including a petitioner's conduct) may cause any equitable constraints on the majority to end or not be breached by excluding the minority from management.

The judgment also contains detailed consideration of the relationship between the duties of a director under ss.172, 175 and 177 of the Companies Act 2006 and the elements needed to show a breach of each of those distinct duties. The decision provides clear authority for the first time that s.175 and s.177 are mutually exclusive.

Mark Hubbard and Kristina Lukacova appeared for the Respondents.

Practice Area: Company

Name: Kristina Lukacova’s successful jurisdiction challenge in the High Court

Reference: [2018] EWHC 3149 (QB)

Date: 19th November 2018

Court: High Court

Facts:
The Claimant, the owner and operator of a Mayfair casino, had invited the Defendant, an Italian entrepreneur, to come to London to gamble at its casino. The Claimant offered (through an agent based in Italy) to cover all of the

Defendant's expenses, including his flights, hotel accommodation for the duration of the stay and complimentary tickets to a Chelsea game. The Defendant accepted the offer. Subsequently, the Claimant commenced proceedings against the Defendant in England.

The Defendant challenged jurisdiction of the English courts under chapter 2, section 4 (Jurisdiction over consumer contracts) of the Brussels Regulation (recast) ("**the Regulation**"). The Defendant argued that article 18(2) of the Regulation applied, under which proceedings against a consumer may only be brought in his Member State of domicile (i.e. Italy).

Decision
Master Kay QC decided that the English court did not have jurisdiction for the following reasons:

(i) The starting point under the Regulation is that the Defendant should be sued in the Member State of his domicile. This principle may be departed from (inter alia) by a jurisdiction agreement which satisfies the requirements of article 25 of the Regulation. However, consumers are given additional protection. Under article 18(2) of the Regulation, proceedings against a consumer may only be brought in his Member State of domicile. Article 18(2) may be departed from only by a jurisdiction agreement which is entered into after the dispute has arisen, or which confers jurisdiction on the court in which both parties are domiciled or habitually resident (article 19). The jurisdiction agreement in this case satisfied neither condition.

(ii) The key question was whether the Claimant had directed its commercial activities to Italy for the purposes of article 17(1)(c) of the Regulation. The Court considered whether the Claimant had manifested an intention to establish commercial relations with consumers from one or more Member States, including Italy. Such intention may be implicit in various methods of advertising, whether disseminated generally (e.g. by the press or television) or addressed directly (e.g. offers made by door-to-door salesmen). In circumstances where (on the Claimant's own evidence) the Claimant had a policy of using agents in Italy to establish commercial relations with consumers based in Italy, the Claimant had directed its commercial activities to Italy for the purposes of article 17(1)(c). The fact that the Claimant and its activities were otherwise based in London was irrelevant. Accordingly, article 18(2) of the Regulation applied and the English court did not have jurisdiction over the claim.

Judge: Master Kay QC

Comment:
This case is a reminder to any business marketing its commercial activities in other Member States that it may only be able to bring proceedings against consumers in their Member State(s) of domicile. This may be the case even if the parties enter into a jurisdiction agreement, unless it satisfies one of the stringent requirements set out in article 19 of the Regulation.

Practice Area: Commercial Litigation

Name: UK Learning Academy Ltd v The Secretary of State for Education

Reference: [2018] EWHC 2915 (Comm)

Date: 8th November 2018

Court: High Court

Facts:

UK Learning Academy Limited ("**UKLA**") claimed a total of about £900,000 (plus interest) from the Secretary of State for Education, said to be due pursuant to four separate contracts for the provision of publicly-funded training to learners aimed to improve their employment skills.

The principal dispute between the parties (accounting for approx. £800,000 of the total amount claimed) related to a contract for the 2008-2009 academic year in Yorkshire & Humber ("**the 2008-2009 Y&H Contract**"), which specified a maximum contract value ("**MCV**") of £135,553.76, which could only be exceeded pursuant to an agreed variation in (signed) writing.

Judge: His Honour Judge Klein sitting as a judge of the High Court

Comment:
The Court dismissed most of UKLA's claim.*

UKLA's claim under the 2008-2009 Y&H Contract failed for (inter alia) the following reasons:

(i) The MCV could only be increased by a signed written variation. There was no such variation on the facts.

(ii) UKLA's argument that the Secretary of State was estopped from relying on the contractual formalities was rejected. Having carefully considered the evidence, the Court held that there was no unequivocal statement or other representation that the Learning Skills Council (a body whose liabilities the Secretary of State for Education had taken on) would not rely on the 2008-2009 Y&H Contract formalities (applying the recent Supreme Court decision in *MWB Business Exchange Centres Ltd v Rock Advertising Ltd* [2018] 2 WLR 1603).

(iii) In any event, for an effective variation, there had to be an offer to vary the contract by one party, which the other party had to accept. The Court carefully reviewed the correspondence between the parties relied on by UKLA, concluding that none of these documents amounted to an offer. Furthermore, even if there had been an offer, the Court was not satisfied that UKLA had communicated its acceptance of such an offer.

* Save for UKLA's claim in respect of the one of the three minor contracts, which succeeded to a limited extent. The amount is yet to be determined, but by the Judge's preliminary "rough and ready calculation", the principal sum due to UKLA might be about £8,275.50.

Practice Area: Commercial Litigation

Articles

Date	Title	Contributors
19th October 2017	In brief: Service out in libel and malicious falsehood cases (Huda v Wells and others) Published In *Lexis PSL - October 2017*	Kristina Lukacova