



## James Saunders

Call: 2017

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### Practice Overview

James joined New Square Chambers in October 2019 following successful completion of his pupillage under the supervision of Alexander Hill-Smith, Aidan Briggs, Mark Hubbard and Nigel Hood.

James appears frequently in his own right in the High Court and County Courts covering the full range of Chambers' practice areas. James' notable instructions have included: advising on a wrongful trading claim with a potential value of £2 million, a successful application to wind-up a deadlocked partnership with co-bankrupt partners, and advising on a complex family dispute involving issues of company decision making, directors' powers and discretionary trusts.

James has gained both led and unled trial experience, having been led by Nigel Hood in a four-week High Court trial concerning issues of civil fraud and partnership dissolution (*Sidhu v Rathor* [2020] EWHC 1916 (Ch)) and defending a possession trial in his own right.

James welcomes instructions across Chambers' practice areas in the full range of commercial-chancery work including insolvency, trusts and estates, property, commercial litigation, civil fraud and company. James frequently tackles cases which link a number of areas of Chancery practice.

James is also a contributor to the forthcoming Third Edition of Gough on Company Charges.

Before coming to the Bar, James spent ten months at the boutique litigation firm Lenczner Slaght in Toronto, specialising in commercial and financial litigation. Previously, James tutored trusts law at the London School of Economics and obtained first class honours in his LLB from University College London.

James can be instructed on a direct access basis.

### Trusts, Wills & Estates

James gained extensive experience of trusts and estates disputes during pupillage including offshore litigation and non-contentious matters. James has gained recent experience of trusts and fiduciary issues in the Isle of Man in a liquidation context. James has written on will variations for the leading international journal *Trusts and Trustees*.

James is familiar with trusts and estate practice, including:

- Applications for removal of trustees and executors, Beddoe applications and Benjamin orders, amongst other Part 64 procedures.
- Particular issues arising in respect of costs in trusts and estate litigation.
- Constructive and resulting trusts claims and tracing.
- 1975 Act claims.
- Rectification and rescission of trust instruments.

- TOLATA proceedings.
- Non-contentious procedures including limited grant and S.116 applications.

James' recent instructions include

- Advising on the liquidation of a corporate trustee
- Advising executors on the correct interpretation of a testamentary disposition to a registered charity
- Advising on a contested application for a grant of letters of administration for beneficiaries entitled in the same degree
- Advising on proprietary estoppel claim against an estate
- Advising on various issues arising in estate administration including issues of the devolution of copyright
- Advising on a TOLATA action between former co-habiting partners
- Advising on the merits of a potential 1975 Act claim against an estate for financial provision
- Advising on securing estate assets in a multi-jurisdictional administration

During pupillage James assisted with:

- An application for the rendering of an account and subsequent distribution from an executor.
- A successful High Court trial challenging a will and lifetime transfers for undue influence and want of knowledge and approval.
- Advising on setting aside appointments, indemnities and powers of attorney for mistake and undue influence in a family trust context.
- Research addressing the operation of arbitration clauses in trusts disputes.
- Drafting Particulars of Claim to set aside lifetime transfers for undue influence.
- Research concerning changes to the proper law of trust administration, rectification of trusts for disabled persons and taxation of pension trusts.

## Property

James is familiar with the full range of Chambers' work in real property and landlord and tenant matters, including TOLATA proceedings, leasehold enfranchisement, mortgage possession proceedings and business tenancy renewals. James has a strong grasp of the interaction between real property issues and insolvency/bankruptcy.

James' recent instructions include:

- Defending mortgage possession proceedings with issues of a mortgagee in administration.
- Advising on a challenge to service charges in respect of a multi-million pound apartment.
- Advising on a contemplated collective enfranchisement with issues of exterior fire cladding replacement service charge disputes
- Defending proceedings for a declaration and damages for infringement of an easement.
- Advising on injunctive relief to prevent a sale at an under value by an LPA receiver
- A 1954 Act application for renewal of a business tenancy.
- Defending a fast-track possession trial under the Housing Act 1985.
- Advising in relation to numerous dilapidations disputes concerning business premises.
- An application for final charging orders over numerous properties and advice on a subsequent order for sale with consideration of service out of the jurisdiction.
- Obtaining a stay of execution of a possession order on an urgent application in the High Court.
- Advising on equitable accounting for interests in a marital home upon bankruptcy.

During Pupillage James assisted with:

- The trial of a preliminary issue in a contested lease renewal under the Landlord and Tenant Act 1954.
- A four-day trial with issues of proprietary estoppel and a lease/licence dispute over a houseboat.
- A two-day Land Tribunal trial for removal of a registered restriction involving considerations of illegality and the use of nominees.
- Advising in a claim resembling P&P and Dreamvar, with additional considerations of an intermediary party.
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## Insolvency

James accepts instructions across the full range of corporate insolvency and bankruptcy matters. James has gained recent experience of the liquidation regime in the Isle of Man. James' insolvency practice frequently crosses paths with trusts and real property issues along with questions of directors' liabilities.

James' recent instructions include:

- Advising on a transaction at an undervalue with a conveyance of a beneficial interest between spouses.
- A successful application to wind up a partnership with two bankrupt partners as an unregistered company under the Insolvent Partnership Order.
- Advice on an English corporate administration with issues concerning intellectual property rights and non-assignment clauses and cross-jurisdictional Californian and Canadian arbitration considerations.
- Advising on questions of unjust enrichment, tracing, knowing receipt and transactions at an undervalue in relation to an insolvency process involving multiple corporate entities.
- Appearing on applications under 235-237 of the Insolvency Act 1986 to require cooperation with an office holder.
- Advising on a wrongful trading claim with a potential value of £2 million.
- Advice concerning a potential S.212 misfeasance action against delinquent directors of a company in liquidation for breach of fiduciary duty.
- Numerous bankruptcy petitions appearing for both creditors and debtors, and associated applications.
- Advising on the implications of retention of title security in liquidation.
- An application for the appointment of an alternative first trustee in bankruptcy under The Administration of Insolvent Estates of Deceased Persons Order 1986.
- Advising trustees in bankruptcy as to equitable accounting for a property between former spouses.
- Advising on the novation of contractual liabilities in a pre-pack administration.
- Advising on the effect of bankruptcy upon a shareholder's voting entitlements.
- Resisting applications for validation orders.
- Pursuing and opposing winding up petitions, annulments and rescissions.

## Civil Fraud

James' recent instructions include:

- Appearing in a 4-week High Court trial concerning the misappropriation of assets and various issues of partnership law led by Nigel Hood (*Sidhu v Rathor* [2020] EWHC 1916 (Ch)).
- Drafting proceedings concerning unlawful and lawful means conspiracy.
- Applications for final charging orders and third-party debt orders in the High Court in the context of corporate fraud and misappropriation of company assets.

- ▢ Preparing witness statements in a matter regarding fraudulent share sales, acquisitions and accounting.

During pupillage James assisted with:

- ▢ Advice regarding the misselling of interest rate hedging products and liability for negligent misstatement.
- ▢ Assisting in skeleton argument preparation and advice concerning tracing under the Proceeds of Crime Act 2002. James has also gained an understanding of compensation and confiscation orders under POCA and the interaction with civil enforcement.
- ▢ An application for Norwich Pharmacal disclosure in a stock trading platform fraud.
- ▢ Assisting with applications for domestic and worldwide freezing injunctions.
- ▢ Conference advice regarding allegations of fraudulent forgery of a will signature.

## **Company & Partnership**

James has recently advised on a complex family dispute involving issues of company decision making, directors' powers and discretionary trust powers in family settlements.

James regularly advises on disputes concerning breaches of directors' duties, often in an insolvency context.

James has also gained recent experience of Company Law issues in an Isle of Man context whilst advising on an offshore liquidation.

James is also familiar with applications to extend the period of registering company charges and for applying to restore companies to the register.

During pupillage James assisted with:

- ▢ Advice on vexatious resolutions and meetings of directors.
- ▢ Drafting Particulars of Claim for breach of a joint venture investment agreement involving multiple corporate vehicles, unjust enrichment and constructive trust claims.
- ▢ Advising in relation to Cooperative and Community Benefit Societies and Industrial and Provident Societies.
- ▢ Drafting shareholder agreements for a settlement involving numerous family-owned corporate entities in multiple jurisdictions.
- ▢ Advice and research concerning dispositions at an undervalue and directors' duties in the Cayman Islands

## **Commercial Litigation**

James' recent instructions include:

- ▢ Advising on resisting an application for pre-action disclosure in connection with a claim for misfeasance in public office.
- ▢ Defending proceedings and security for costs applications pursued against a company for breach of a construction contract.
- ▢ Drafting proceedings for breach of a deed of guarantee.
- ▢ Assisting in drafting a defence to a debt claim with issues of conflict of laws, champerty, assignment and the Rome II Regulation

During pupillage James assisted with:

- ▢ An advice regarding the misselling of interest rate hedging products and liability for negligent misstatement.
- ▢ Drafting a Defence resisting a claim for breach of a service contract.
- ▢ Drafting pleadings in a claim under the Consumer Credit Act and Financial Services and Markets Act concerning regulated mortgage contracts.
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- Drafting pleadings in a claim arising from a failed joint venture, involving considerations of unjust enrichment, constructive trusts and nominee companies.

## Additional Information

### Qualifications / Education

- Bar Professional Training Course, City Law School (Outstanding)
- LLB, University College London (First Class Honours)
  - Unjust Enrichment First in Year

### Awards

- Major Scholarship (Inner Temple)
- Harold G Fox Scholarship (Middle Temple)
- Provosts Award for Academic Excellence (University College London)

### Publications

"*Crowden v Aldridge: The Correct Approach to Variations?*" in *Trusts and Trustees*, addressing deeds of variation.

### Memberships

- Contentious Trusts Association (ConTrA)
- R3
- Property Bar Association
- Chancery Bar Association (ChBA)

### Public Access

Yes.

## Cases

### Secrets Revisited - Wood v Commercial First in the Court of Appeal

**Reference:** [2021] EWCA Civ 471

**Date:** 12 Apr 2021

**Court:** Court of Appeal

In November 2019, I wrote on the first instance decision of Mr James Pickering (sitting as a Deputy Judge of the High Court) in *Wood v Commercial First Business*. The case has recently found its way to the Court of Appeal alongside the decision of Mr Justice Marcus Smith in *Business Mortgage Finance 4 Plc v Pengelly*. Both cases raise similar issues of secret and half secret commissions and the law applicable to bribes made to agents.

The Court of Appeal addressed the following central issues: (1) does a claimant principal need to establish that the bribed party owes them a fiduciary duty? (2) when will the level of disclosure suffice to render a commission "half-secret"?

### The Facts

Both cases involved the same basic relationship. A borrower, utilising a broker to obtain a secured loan from a commercial lender. In each case the broker received a percentage commission payment from the lender which was not clearly disclosed to the borrower. The lender entered liquidation in November 2018 and was dissolved in December 2019 with the loans being securitised and assigned to third-parties.

In both cases the borrowers defaulted on repayments and sought rescission of the loan agreements and accompanying mortgages on the basis of the broker's fully secret commission. In *Wood*, Mrs Wood issued proceedings to set aside the loan agreement after enforcement proceedings had been taken against her and possession orders made. Mr Pickering found in her favour and rescinded the mortgage. The assignees appealed.

In Pengelly, at first instance HHJ Carr dismissed Mr Pengelly's defence and counterclaim and gave the assignee mortgagee liberty to enforce its possession order. Marcus Smith J allowed Mr Pengelly's appeal on the point of rescission. Again, the assignee appealed this decision.

The significant point of difference between the two High Court judges was whether a fiduciary relationship was a pre-requisite to the principles concerning bribes being engaged as against the lender. Mr Pickering found that no such duty was necessary whereas Marcus Smith J held that it was.

**Judge:** Lord Justice David Richards, Lord Justice Males and Lady Justice Elisabeth Laing

**Practice Area:** Commercial Litigation

## Articles

| Date        | Title  | Contributors   |
|-------------|--|----------------|
| 12 Apr 2021 | Secrets Revisited - Wood v Commercial First in the Court of Appeal<br>Published in   | James Saunders |
| 03 Mar 2021 | Donatio Mortis Causa or "Death Bed Gifts" Davey v Bailey [2021] EWHC 445 (Ch)<br>Published in  | James Saunders |
| 18 Feb 2021 | Transactions at an Undervalue – Beneficial Interests and Declarations of Trust: Lyle v Bedborough [2021] EWHC 220 (Ch)<br>Published in           | James Saunders |
| 17 Feb 2021 | Court refuses to approve tainted fiduciary decision making (Schumacher v Clarke)<br>Published in <i>Lexis®PSL on 11/02/2021</i>                  | James Saunders |
| 20 Oct 2020 | Elections and changes of position in the Caribbean (Delta Petroleum v BVI Electricity Corp)<br>Published in <i>LexisPSL</i>                      | James Saunders |
| 01 Oct 2020 | Not My Brother's Keeper – A Brief Guide to Inactive Directors' Liabilities IT Protect Ltd (In Liquidation) [2020] EWHC 2473 (Ch)<br>Published in | James Saunders |
| 25 Sep 2020 | When is a case sufficiently arguable for Norwich Pharmacal relief? (Hickox v Dickinson)<br>Published in <i>Lexis PSL</i>                         | James Saunders |
| 16 Jun 2020 | Re Fowlds [2020] EWHC 1200 (Ch) (ICC Judge Jones)<br>Published in  | James Saunders |
| 27 Apr 2020 | Top Ten Easy Mistakes to Make in Bankruptcy Petitions<br>Published in  | James Saunders |
| 21 Apr 2020 | Top Ten Easy Mistakes to Make When Winding Up Companies<br>Published in  | James Saunders |

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|-------------|---|--------------------------------|
| 20 Apr 2020 | COVID 19: Revisiting Frustration in the Context of Leases<br>Published in   | Jeff Hardman<br>James Saunders |
| 30 Mar 2020 | Imposing Quistclose trusts—knowledge, not notice, as the golden rule ( <i>Goyal v Florence Care Ltd</i> )<br>Published in <i>LexisPSL</i>   | James Saunders                 |
| 27 Feb 2020 | Counterfactual defences to unjust enrichment restricted in Woolwich restitution claims ( <i>Vodafone Ltd &amp; Ors v The Office of Communications</i> )<br>Published in <i>LexisPSL</i> | James Saunders                 |
| 25 Nov 2019 | Contractual silence - a gateway for unjust enrichment ( <i>Barton v Gwyn-Jones</i> )<br>Published in <i>LexisPSL</i>  | James Saunders                 |
| 05 Nov 2019 | <i>Wood v Commercial First Business Ltd (In Liquidation)</i> [2019] EWHC 2205 (Ch)<br>Published in  | James Saunders                 |

## Publications

| Date        | Title  | Contributors   |
|-------------|--|----------------|
| 29 May 2020 | The pitfalls of voluntary rectification ( <i>MV Promotions v Telegraph Media Group</i> )   | James Saunders |
| 21 May 2020 | Construing erroneously drafted public facing documents—construction declaration or rectification? ( <i>Pathway Finance SARL v Defendants</i> ) | James Saunders |
| 24 Apr 2020 | Actions speak louder than words—remedying material breaches ( <i>Bains v Arunvill Capital Ltd</i> )  | James Saunders |

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