

INTERNATIONAL TRUST LITIGATION CONFERENCE 2020



Heroes and Villains: Protecting Trust and Property Interests in an Uncertain World



Wednesday 23 September 2020

16:00 (GMT) via Zoom

We look forward to welcoming you to XXIV Old Buildings' 2020 International Trust Litigation Conference. We are sad not to see you all as usual this year at the Hotel des Bergues in Geneva. This year our team will provide a virtual guide through the latest trust law developments from multiple jurisdictions focusing on the courts' unique jurisdiction in trust matters and the perils in store for the less than honest before the civil courts.

16:00 – 16:05

Presented by Stephen Moverley Smith QC and Sarah Bayliss



Chairman's Introduction - *Stephen Moverley Smith QC*

16:05 – 16:15

Defrauding Fraudsters: A Cautionary Tale for the Dishonest - *Steven Thompson QC*



Steven Thompson QC discusses the recent Privy Council decision in *Ciban v Citco* [2020] UKPC 21 and its ramifications for big shot tax evaders and fraudsters who squirrel away their assets but are then cheated or robbed by their own lackeys.

16:15 – 16:45

Is this your Case, Sir? - Erin Hitchens, Kira King and Tom Stewart Coats



Our very own fraud squad thwarts the villains with an update on civil fraud:

Erin Hitchens examines the evidential basis for establishing dishonesty after the Court of Appeal decisions in *Bank St Petersburg PJSC v Arkhangelsky* [2020] EWCA Civ 408 and *Sofer v SwissIndependent Trustees SA* [2020] EWCA Civ 699.

Kira King looks at the requirements for establishing dishonest assistance in fraud cases in light of *Magner v RBS* [2020] UKPC 5 and *Group Seven Ltd v Notable Services LLP* [2019] EWCA Civ 614.

Tom Stewart Coats considers caselaw developments concerning the attribution of liability for fraudulent conduct to third parties in *Singularis Holdings Ltd (In Liquidation) v Daiwa Capital Markets Europe Ltd* [2019] UKSC 50 and the *Group Seven* case.

16:45 – 16:55

Charlatan's Web - *Andrew Holden*



Andrew Holden revisits the question of illusory trusts and the limits of reserved powers in light of the Privy Council's recent decision in *Webb v Webb* [2020] UKPC 22.

16:55 - 17:25

Count your Blessings! - *Elsbeth Talbot Rice QC, Elizabeth Weaver and Timothy Sherwin*



Our fine upstanding panel consider the court's inherent jurisdiction to intervene in the administration of a trust to protect the interests of beneficiaries, whether by way of blessing momentous decisions, accepting surrender of a trustee's discretion or otherwise - *Lehtimaki v Cooper* [2020] UKSC 33, *HSBC International Trustee Limited v Tan Poh Lee* FSD 175 of 2019 and *Re a Trust* 22 ITEL 370 (both Cayman) and *Re R Trust* [2019] SC (Bda) 36 Civ; 22 ITEL 123 and *Re C Trust* [2019] SC (Bda) 44 App; 22 ITEL 155 (both Bermuda).

17:25 - 17:30

Chairman's Closing Remarks - *Stephen Moverley Smith QC*

Biographies

Stephen Moverley Smith QC Stephen specialises in commercial and private client disputes, trust and company work with a multi-jurisdictional dimension. He has an extensive international practice, particularly in the Cayman and British Virgin Islands, and is recommended by Chambers & Partners as a leading offshore silk. Also recommended for private client, commercial chancery, commercial litigation, fraud, company, insolvency and banking/finance, the legal directories describe him as *"an obvious leader"* and *"a creative problem solver who rolls up his sleeves, gets stuck in and has an excellent courtroom style"*.

Elspeth Talbot Rice QC Described in the directories as *"the smiling assassin"*, and crowned Chambers and Partners' Chancery Silk of the Year 2018 and Legal 500's Trusts and Probate Silk of the Year in 2019 and 2020, Elspeth is a highly sought after court advocate who commands a wealth of international trusts expertise. She acts in international trust matters for private clients and commercial enterprises across the globe, combining her knowledge and depth of experience with incisive legal analysis, clarity of expression, practicality, supreme approachability, energy and zest, a strong court presence and superb advocacy. Chambers & Partners, Chambers Global and Legal 500 as well as Citywealth Leaders all recommend her as a leading silk, with Chambers & Partners ranking her as a star individual for traditional Chancery work. Citywealth Leaders quotes a market source as saying *"Elspeth embodies all of the qualities we look for in our leading counsel: intellectual rigour, fierce determination, engagement with the client and the detail of the case, composure under pressure, commerciality and articulate leadership. She manages also to be highly responsive, accessible, energetic and incredibly positive. This combination of skills and personality is incredibly hard to find in one person and consequently she is much in demand in the big cases, where her sense of purpose and direction are of immense value."*

Steven Thompson QC Steven Thompson QC has particular experience in the British Virgin Islands where he lived in 2000 whilst on secondment to a local law firm. He was called to the BVI Bar that year and has since appeared in the BVI High Court, Court of Appeal and Privy Council in BVI disputes. In addition to appearing in the courts of BVI, Steven also has experience in hearings in the Cayman Islands, Gibraltar, the Turks & Caicos Islands, Jersey and Guernsey. In addition, he has been instructed and heavily involved in disputes being litigated in the Isle of Man, Cyprus, the Bahamas and Hong Kong, acting for trust companies, beneficiaries, professional directors and others particularly in cases involving business breakdowns, fraud and breaches of fiduciary duty.

Elizabeth Weaver Described as *"just brilliant...very clear thinking and very good to deal with"* (Chambers HNW 2020) *"comparable to a QC"* (Legal 500) and praised for *"impeccable drafting skills and clear advice, attacking the issues head on"* (Chambers Global), Elizabeth has extensive experience and expertise in both domestic and offshore trust and probate litigation which she combines with her acknowledged expertise in company, commercial and professional negligence work. She is recognised for her *"extremely good judgment and excellent insight into how a case will play out"*. Elizabeth's recent work includes acting for trustees and beneficiaries on a number of *Public Trustee v Cooper* applications, advising trustees on issues relating to the winding up of a trust and advising executors about the ownership and recovery of overseas assets.

Sarah Bayliss Sarah is recognised as a leading junior in offshore and insolvency in Legal 500 which comments she is a *"robust advocate"* with *"good client care skills"*. Sarah is also noted as a *"fantastic barrister, very commercial as well as pragmatic"* and *"a good tactician with a sharp mind for complex issues"*. Sarah's private client/offshore practice spans substantial international disputes involving private individuals, fiduciaries and banks/funds alongside domestic wills and trusts work. Sarah acts for clients in a number of jurisdictions including the BVI, Bermuda and the Cayman Islands, the Channel Islands, Gibraltar and the DIFC. Recent matters include a substantial multi-jurisdictional dispute involving allegations of malpractice against a major Swiss bank, international litigation to recover assets on behalf of members of the Perry family with proceedings in England, the Cayman Islands, the BVI, Liechtenstein, Curacao and Delaware and an interesting dispute on construction and costs arising out of a 1924 indenture before the English Court of Appeal in *Re Charles Willis Harrison 1924 Settlement* [2019] EWCA Civ 966.

Erin Hitchens Erin's practice includes trusts and estates litigation, commercial litigation, aviation, financial services, fraud and company law work. She has been instructed in relation to proceedings in several offshore jurisdictions including the Cayman Islands, Jersey, the BVI, Anguilla and the DIFC relating in particular to trusts and funds. Erin's recent and ongoing work includes a multi-jurisdictional family trust dispute to recover assets, various fraud claims involving allegations of conspiracy, dishonest assistance and knowing receipt, a claim for a beneficial interest in a painting, a dispute among family members concerning the beneficial interest in a shareholding and a claim for breach of duty and conspiracy against a party purporting to act as an executor.

Andrew Holden Andrew enjoys a busy commercial chancery practice. He has extensive experience acting in complex trust disputes, both in the UK and in other courts and tribunals worldwide, with Chambers UK Bar 2020 ranking him as a Band 1 Junior for his Trusts practice. Current cases include *Dawson Damer v Grampian Trust Company Ltd*, a nine-figure trust dispute which is going to trial in The Bahamas in November 2020, as well as a major UNCITRAL trust arbitration. Andrew recently assisted the Bermuda Trust Law Reform Committee in drafting new firewall legislation for Bermuda, which was enacted in August as the Trusts (Special Provisions) Amendment Act 2020.

Kira King Kira has over twelve years' experience of contentious trusts matters which she combines with a broad commercial practice with a particular focus on civil fraud, insolvency, banking and company matters. Kira appears in a broad range of contentious trust matters including fraud and tracing claims, claims for relief in relation to breach of trust and/or fiduciary duty and disputes concerning beneficial ownership of property and mistake. Kira is an experienced advocate who frequently appears in the High Court and has experience of both trial and appellate advocacy. Kira has substantial offshore experience having been called to Bar of the Eastern Caribbean Supreme Court (BVI) and the Gibraltar Bar (on an ad-hoc basis) and in addition has been instructed on cases in the Cayman Islands, Dubai, Guernsey and Jersey. Kira has experience of acting for the settlors, trustees, beneficiaries and protectors of private trusts. Her traditional chancery experience includes applications to remove or substitute trustees, applications by trustees for directions, *Beddoe* applications, a wide variety of contentious probate claims (including allegations of fraud, undue influence, lack of capacity and want of knowledge and approval). She is currently instructed in blessing proceedings in the Chancery Division pursuant to the authority in *Public Trustee v Cooper* [2011] WLTR 901 in respect of a share sale transaction valued in excess of £100 million.

Tom Stewart Coats Tom has a broad international commercial and traditional chancery practice. He has recently been instructed in international trusts and estates disputes involving a variety of different jurisdictions and governing laws, including Guernsey, Jersey, the DIFC, Gibraltar and Hong Kong. Tom has a particular interest in trusts litigation which features related areas of law including company law, family law, arbitration, and issues of mental capacity. Tom did a secondment in the trusts and succession disputes group at a leading London firm where he was involved in a range of international and domestic trusts, estate and probate cases.

Timothy Sherwin Timothy specialises in trust disputes, in both the private client and commercial spheres. He is the only junior listed as "up and coming" in both Chancery: Traditional and Chancery: Commercial in Chambers and Partners. Clients describe him as "very impressive", "absolutely brilliant", and "a very able junior with a maturity and level of ability which belies his call". He is the only barrister to have been nominated as Star Associate/ Junior under 10 years' call at the Chambers and Partners High Net Worth Awards 2020.

His recent trust work includes: *Gibbons v Smith* [2020] All ER (D) 38 (Jul); *X Trusts* [2018] SC (Bda) 56 Civ; *Byers v Samba Financial Group* [2020] EWHC 853 (Ch); and *Re Z* [2019] EWCOP 9. Aside from these cases, he is currently working on a large number of other trust disputes and trust applications, both contentious and non-contentious. Timothy is comfortable working on his own cases, as well as being instructed as part of a team.

Much of Timothy's work is international, and he has experience of trusts matters in Jersey, Guernsey, the Isle of Man, the BVI, Bermuda, Prince Edward Islands, the Bahamas and the Cayman Islands. As a result, Timothy is particularly experienced in dealing with and advising on conflicts of laws and jurisdictional issues.

Our thanks go to Adam Cloherty, James Fennemore, James Ladbrook and Andrew Grosvenor for their assistance in organising this year's conference.