



Phillip Currie

Barrister at Forum Chambers

Call 2009



Phillip is a commercial barrister with particular expertise in insolvency, banking, property and professional negligence. He is an experienced advocate, appearing regularly in the High Court both as sole advocate and as junior counsel.

Recent Banking and Finance cases:

Currently advising SME on a potential claim against bank for breach of its express and implied contractual duties of care, breach of statutory duties and economic duress arising from the collapse of the client's business as a direct result of its relationship with the potential defendant bank.

Recent Commercial Litigation Cases:

Representing the Defendants to a multi-million pound conspiracy claim, which raised significant issues about the quantity of potential evidence and the need for statistically significant representative samples. The litigation settled following mediation.

Arbitration arising out of one party's retirement from a partnership, involving a challenge to the arbitrator's jurisdiction and a dispute about the scope of an expert determination clause.

Advising property investors on potential claims against scheme managers for fraud and their banks for breach of the *Quincecare*.

Representing the Defendants in a claim for additional sums said to be due under a share purchase agreement, the terms of which were disputed and subject to a counterclaim for rectification.

Advising on and drafting an unfair prejudice petition in respect of a two shareholder/director company arising from one director's desire to "trade through" a potential insolvency (settled shortly after drafting).

Advising on, drafting and appearing in an unfair prejudice petition where one of the director/shareholders was accused of taking clients and competing with the company.

Advising on the enforcement of an unfair prejudice petition settlement where the shareholders continue to disagree with how the company and its assets ought to be divided.

Areas of Expertise:

- Banking and Finance
- Commercial Litigation
- Construction
- Injunctions
- Insolvency
- Professional Negligence



Dispute between partners about the how the firms profits were to be accounted for and a claim that one of the partners had diverted income to a completing company.

Advised on a potential unfair prejudice petition that would require piercing the corporate veil and trust structures to identify the ultimate beneficial owners of the shares.

Recent Construction Cases:

Acting (led) for a consultant in a number of high-value adjudications and now in litigation concerning significant disputes arising from the construction of a large biomass energy plant.

Advising main contractors on threatened proceedings against them for breach of allegedly non-delegable duties.

Advising home owners and a main contractor on potential claims against negligent subcontractors.

Advising creditors of Carillion following its collapse in early 2018, and in particular on their rights to obtain payment from the bank under Carillion's Early Payment Facility Agreement.

Acting for the assignee of claims from an insolvent plumbing company in its claims against a negligent subcontractor.

Recent Injunctions:

Obtaining an injunction (ex parte and continued inter partes) to prevent the sale of a house pending the trial of a claim under s.423 of the Insolvency Act 1986 concerning the transfer of that house (in which Philip later successfully represented the Claimants).

Obtaining an injunction (ex parte) to prevent the advertisement of a winding up petition. The petition was withdrawn prior to an inter partes hearing.

Recent Insolvency Cases:

Manolete Partners plc v Hope and Jones (ICC Judge Prentis): successfully representing the Claimant at the trial of claims for the repayment of dividends that had been paid unlawfully, and for the recovery of sums wrongly paid by the company in an attempt to satisfy the terms of a share purchase agreement. Of particular interest, the court agreed that the interpretation of the shareholders' knowledge requirement for the repayment of unlawful dividends in s.847 of the Companies Act 2006 (as explained by reference to EU law in *It's a Wrap (UK) Ltd (In Liquidation) v Gula* [2006] EWCA Civ 544) was not altered by Brexit or the European Union (Withdrawal) Act 2018.

Representing the administrators in a series of *Berkely Applegate* applications relating to collective asset management agreements with substantial unallocated trust funds.

Re Tough Mudder GmbH: successfully obtaining confirmation of the Creditors Voluntary Liquidation of the German subsidiary of an English company, on the basis that its COMI was shown to be in England.

Wessely & Anor (Zoom UK Distribution Ltd) v Rubra & Ors [2021] EWHC 800 (Ch): representing the directors of a company in administration in an application for a declaration that the administrators' appointment was valid notwithstanding the failure to give notice to a qualifying floating charge holder. The decision resolves an issue on which there had previously been a conflict of judicial opinion.

Recent Professional Negligence Cases:

Advising on a potential claim against solicitors arising out of alleged failures to follow client instructions in the drafting of a share purchase agreement, leading to litigation about the true purchase price

Advising on a potential claim against solicitors arising out of alleged failures to advise on the appropriate form and the drafting of a multi-million pound construction contract.

Acting in a claim against an IFA for negligent investment advice.

Acting in a claim against solicitors for failing to issue commercial lease renewal proceedings in time.

Right to Buy Litigation [2015] EWHC 1559 (Ch): together with David McIlroy, representing thousands of claimants in a group action concerning claims against solicitors conducting conveyancing under the Right to Buy Scheme.

A number of high-value adjudications, now in litigation: the dispute concerns the construction of a large biomass energy plant. Acting for the process engineering design consultant in a claim for its fees, met with a counterclaim (c£9m) for allegedly negligent design and failure to adhere to design specification. Extensive expert evidence on the state of the art and the standards that can reasonably be expected.

Advising a contractor on its liabilities for allegedly negligent work practices used by one of its sub-contracts. Issue of whether the work method was so inherently dangerous as to prevent the delegation of the duty of care to the sub-contractor.

Acting for an employer and the main contractor in claims against an allegedly negligent sub-contractor for excavation, removal of support, and consequent damage of neighbouring property. Includes claims against insurers under the Third Parties (Rights against Insurers) Act 2010.

Advising a consultant on a potential negligence claim against the solicitors that advised on and drafted its contract of appointment, for failure to advise on the nature of liability being asked for by the contractor and on the unsuitability of the form of contract for the nature of the work involved.

Acting for an employer on the enforcement of two adjudication awards (one in their favour, one against them), concerning the negligent quality of the building works (and an issue as to the proper identity of the contractor).

Acting for the claimant against a plumbing sub-contractor and his insurers for the negligent installation of shower fittings in a new build block, leading to substantial flooding damage.

Acting for the contractor in a claim for unpaid fees, met with allegations of fraudulent applications for payment.