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Jeremy Bamford

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Year of Call: 1989

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PRACTICE AREAS

Insolvency & Restructuring

Company

Company Directors Disqualification

Professional Negligence and Disciplinary

Commercial

PROFILE

Jeremy specialises in commercial litigation with a particular emphasis on all aspects of contentious insolvency (corporate insolvency, LLPs, partnerships and bankruptcy), company law (including directors' duties, shareholder disputes and unfair prejudice petitions), company directors' disqualification proceedings and BROs, disciplinary, licensing and regulatory proceedings involving insolvency practitioners (acted for the ICAEW on boo.com) and bank recovery proceedings (charges, mortgages, guarantees and indemnities). He has appeared in over 25 reported insolvency and CDDA cases.

He has considerable practical experience of directors' disqualification proceedings. He frequently represents directors, including in the high-profile World of Leather, Time Computers, Finelist, Farepak and UKLI disqualification cases. He is a contributor to Mithani: Directors' Disqualification (Butterworths).

Jeremy is a Council Member of the Insolvency Lawyers Association and is a member of the ILA Technical Committee.

For many years he has been ranked as a leading junior for his Restructuring & Insolvency, Company and Chancery work in Chambers & Partners directory.

PRACTICE AREAS

Insolvency & Restructuring

Jeremy is a specialist insolvency barrister. Insolvency work forms the majority of his practice and includes all aspects of company, LLP, partnership and individual insolvency. His experience ranges from applications to set aside statutory demands, bankruptcy petitions, administration applications, through clawback proceedings (misfeasance, TUV, preferences, s.423 IA 1986), unlawful dividends and distributions, CVA/IVA voting appeals/revocation/unfair prejudice applications to solvent members' voluntary winding up, along with pretty much most things in between.

Recent cases include:

- Application for retrospective validation order under s.127 IA 1986 in respect of debenture and legal charge as security for short term loan: Macclesfield Town Football Club Ltd [2020] EWHC 3605 (Ch)
- Represented well known high-street retailer in obtaining order bringing forward the date listed for hearing of an advertised winding up petition under r. 12.1 IR 2016 and CPR r. 3.1(2)(b) and dismissing the petition, as part of and to facilitate a solvent re-structuring;
- Represented administrators and directors on an urgent application obtaining declaratory relief as to validity of appointment of administrators: Towcester Racecourse Co Limited [2018] EWHC 2902 (Ch);
- Representing with leading counsel the defendants in a 5-day trial of a £3.3M transaction at an undervalue and misfeasance / breach of fiduciary duty case. Claim dismissed: Hellard & Anor v Graiseley Investments & Ors [2018] EWHC 2664 (Ch);
- Representing with leading counsel the respondents in a 2-day appeal by the liquidators in the above case against the dismissal of their claim and indemnity costs order against the liquidators. Appeal dismissed: Hellard & Anor v Graiseley Investments & Ors [2019] EWHC 2994 (Ch)
- Advising on the categorization of disbursements and expenses under SIP 9;
- Various administration applications and extension of administration applications;
- Representing deceased's personal representatives in s. 366 IA 1986 and account application by trustee of deceased debtor's estate;
- Advising on a ss. 216 and 217 IA 1986 claim;
- Advising and representing creditor in respect of s.423 IA 1986 application;
Representing supervisor of IVA on bankruptcy petition for debtor default under terms of the IVA;
- Representing trustee in bankruptcy in various applications including income payments order, delivery up of documents and responding to review application by bankrupt;
- Berkeley Applegate application by administrator of partnership;
- Administration application in respect of solicitor firm;

- Advising and representing liquidator in unlawful distribution of capital and breach of fiduciary duty claim;
- Advising and representing administrators on various applications in connection with administration, which ultimately resulted in realisations of £7M and full payment to creditors with interest and costs. Advising on and representing administrators in exit route from administration, via solvent members' voluntary winding up and mechanism to allow the surplus from pooled asset realisations from 2 companies to be distributed on a compromise basis to shareholders;
- Representing HMRC on various hearings of an administration application in respect of Lotus F1 Team Ltd, prior to its acquisition by Renault Sport.

Company

Jeremy has considerable company law experience dealing with director's duties, shareholder disputes, unfair prejudice petitions and just and equitable winding up petitions. His reported company cases include *Wilton-Davies v Kirk* [1998] 1 BCLC 274, in which he obtained an interim order for the appointment of a receiver in an unfair prejudice petition and *Dyment v Boyden and Bishop* [2005] 1 WLR 792, one of the few unlawful financial assistance cases under s.151 CA 1985 to reach the Court of Appeal, where he acted at first instance and in the appeal for the successful defendants.

Recent cases include:

- Advising and representing a petitioner in an unfair prejudice petition listed for a 9-day trial in 2019. Case successfully settled with share purchase order just before trial;
- Representing and advising majority shareholders defending unfair prejudice petition;
- Advising majority shareholders in respect of a threatened unfair prejudice petition;
- Successfully resisting a strike out of an unfair prejudice petition on the grounds of abuse of process in not accepting an allegedly fair offer to purchase shares;
- Successfully obtaining declarations and orders in a rectification claim to set aside the forfeiture of shares, set aside allotments of shares made in breach of ss. 561 and 562 CA 2006 and restore the claimant's shareholding to the register of members;
- Represented along with leading counsel respondents to an unfair prejudice petition and just and equitable winding up petition, which was successfully settled at a mediation;
- Represented a petitioner in an unfair prejudice petition in respect of a cider brewing company and successfully obtained a share purchase order immediately before trial;
- Advising and representing banks in applications for late registration of company charges.

Company Directors Disqualification

Jeremy has considerable specialist experience of disqualification cases under the CDDA 1986, for many years he acted for the Secretary of State / Official Receiver under his appointment to the Attorney General's CDDA provincial panel, advising on and presenting disqualification cases at trial.

In addition, he has substantial experience defending directors in disqualification proceedings, during the pre-issue investigation period, assisting with and drafting representations to avoid the issue of proceedings or narrow and clarify allegations, evidence in defence, defending directors at trial, disqualification undertakings and s.17 CDDA permission applications for leave to act as a director.

He represented directors in the high-profile World of Leather, Time Computers, Finelist, Farepak and UKLI disqualification cases.

He is a contributing editor to the specialist textbook Mithani: Directors' Disqualification (LexisNexis).

Recent cases include:

- Representing SoS during 2021 and 2022 in a claim against 3 defendants including allegations of acting as de facto or shadow director, acting in breach of previous disqualification undertaking and breaches of directors' duties. Two defendants gave disqualification undertakings for 9 years and the third for 7 years shortly before trial;
- Representing with leading counsel 2 directors in a 6-day disqualification trial in London, a subsequent hearing to determine the period (lower bracket, rather than middle bracket as sought by SofS) and successfully obtained permission to act in respect of a group of companies: NRG2 Ltd [2018] EWHC 2160 (Ch);
- Successfully represented the SofS in a 2-day disqualification trial in Bristol: Re CQH1 Ltd and RTD1 Ltd [2018] EWHC 1331 (Ch);
- Successfully represented the SofS in a ½ day disqualification trial in Bristol;
- Acted for a director pre-issue during investigation stage. Case dropped;
- Advised and represented a director in defending disqualification claim. Case dropped after evidence in defence and before trial;
- Successfully represented the SofS in a 3-day disqualification trial in Southampton;
- Advising SofS on disqualification claim in respect of 2 high profile individuals;
- Advising and representing director in respect of disqualification undertaking and s.17 permission application. Successfully obtaining leave, notwithstanding application actively opposed by SofS.

Professional Negligence and Disciplinary

Jeremy has particular experience dealing with Disciplinary and Regulatory matters involving IPs. He has advised and represented a number of the recognised professional bodies and insolvency practitioners in respect of disciplinary complaints and decisions to withdraw insolvency practitioners' licences.

He successfully represented the Investigation Committee of the ICAEW before the disciplinary committee (i) in a disciplinary complaint against 2 IPs concerning their appointment as provisional liquidators of boo.com, where there was a prior material professional relationship and (ii) in a disciplinary complaint against an IP concerning an invalid appointment as LPA receiver and duress and also acted before the Appeal Tribunal of the ICAEW in respect of that complaint.

He successfully defended a solicitor/IP facing an investigation of a professional complaint by the Law Society and successfully represented an IP in an appeal to the Insolvency Service over their decision to withdraw his insolvency licence.

Recent cases include:

- Representing an RPB in a 2-day disciplinary committee hearing against an IP;
- Advising an IP in respect of a decision by an RPB to withdraw his licence, following an adverse monitoring visit report and referral to the RPB licensing and admissions committee;
- Advising and representations on behalf of an IP in respect of an investigation and draft allegations produced by an RPB in respect of a complaint made by replacement office holders;
- Advising an IP in respect of 2 complaints, successfully opposing a joinder application and representing the IP in a 4-day hearing before disciplinary committee, which dismissed the allegation of dishonesty made against the IP;
- Representing the investigation committee of an RPB in a 5-day disciplinary committee hearing;
- Advising and representing an IP in respect of an urgent interim application to withdraw his licence

(application withdrawn after representations made) and subsequently successfully represented the IP at a 3-day hearing before the licensing committee, which continued the IP's licence, subject to conditions proposed and agreed by the IP.

Commercial

Jeremy has experience of a wide range of commercial litigation, including in particular bank recovery proceedings (enforcement of charges, mortgages, guarantees, LPA receivership), civil fraud (including dishonest assistance and knowing receipt), ROT, breach of warranty and general contractual disputes.

Recent cases include:

- Representing HMRC in obtaining freezing orders against defaulting umbrella companies involved in labour supply frauds;
- Advising administrators on rights of indemnity, contribution and subrogation in connection with inter-company guarantees given by a group of companies;
- Representing defendant in successful application in Commercial Court to set aside default judgment for £5.4M in respect of fraud alleged to have been committed by client: Apollo Ventures Co. Ltd v Manchanda and others [2018] EWHC 58 (Comm);
- Representing bank in 2-day CMC in Commercial Court concerning confiscation proceedings against convicted fraudster and web of offshore companies. Successfully obtaining order hiving off bank's claim to monies held in escrow account to be dealt with in separate action;
- Advising and representing bank in subsequent Chancery Division proceedings and obtaining declaratory relief as to guarantee liability and release of £3m escrow monies to bank;
- Representing HMRC in obtaining freezing order in support of MTIC fraud claim;
- Advising and representing bank in respect of wife's undue influence, misrepresentation and non est factum claims;
- Representing bank in 4-day hearing of property hi-jacking case before First Tier Tribunal and obtaining dismissal of rectification claim: Bakrania v (1) Lloyds Bank (2) Souris [2017] UKFTT 364 (PC);
- Advising and representing bank defending claim by wife to set aside mortgage for alleged undue influence / misrepresentations by husband.

SIGNIFICANT CASES

Macclesfield Town Football Club Ltd [2020] EWHC 3605 (Ch); [2020] 11 WLUK 438

Application by lender for retrospective validation order under s.127 IA 1986 to validate debenture and legal charge over football ground granted to secure short term loan to assist cashflow of club during off season. Whether the disposition was for the benefit of creditors by allowing the club to continue to trade. Validation order granted.

Refined (UK) Ltd v Gordon [2020]

12 WLUK 637

Late reamendment by liquidators to allege that leases granted by company were void or shams and claim for rectification of Land Register. Application by mortgagee of leases for joinder to protect security interest, as a necessary interested party to the rectification claim, and to vacate imminent trial date.

Hellard & Anor v Graiseley Investments & Ors [2019]

EWHC 2994 (Ch)

Liquidators' appeal against dismissal at trial of TUV and misfeasance claim based on accounting journal entries and against indemnity costs order dismissed.

Hellard & Anor v Graiseley Investments & Ors [2018]

EWHC 2664 (Ch); [2018] 10 WLUK 474

Whether accounting journal entries constituted / evidenced a transaction at an undervalue and whether a witness statement of the applicant liquidator had any evidential status at trial.

Towcester Racecourse Co Limited [2018]

EWHC 2902 (Ch); [2021] 1 BCLC 467; [2019] BPIR 411; [2018] 10 WLUK 524

A notice of appointment of administrators which stated the date and time of appointment by reference to the date and time of filing of the notice in court was not defective. Further, a requirement in the company's articles for the prior written consent of an outside investor had been waived and did not affect the validity of the appointment of the administrators.

Secretary of State for Business etc v Walsh; Re NRG2 Limited [2018]

EWHC 2160

Whether directors who conducted an informal liquidation without making adequate provision for all creditors were guilty of conduct which made them unfit to be a director of a company.

Secretary of State for Business, Energy & Industrial Strategy v Steven; Re CQH1 Ltd and RTD1 Ltd [2018]

EWHC 1331 (Ch); [2018] 6 WLUK 188

Directors disqualification – disqualification order made against director who caused 3 restaurant companies to fail to submit statutory returns to HMRC and traded to the detriment of HMRC by a policy of discrimination.

Director's assertions that he reasonably believed the position of the companies would improve were too uncertain and speculative and did not amount to extenuating circumstances.

Apollo Ventures Co. Ltd v Manchanda and others [2018]

EWHC 58 (Comm); [2018] 1 WLUK 71; LTL 12/2/2018

Alleged fraud by D1 (a Thai national, who had been convicted in Thailand in connection with the alleged fraud), as director of claimant (Thai registered company) in causing claimant to obtain loans and allegedly dissipating loan monies to members of D1's family. Defendants successfully applied under CPR r. 13.3 to set aside judgments in default for £5.4M on basis (i) agreement by claimant's solicitor in correspondence not to apply for judgment in default and (ii) real prospects of defending the claims.

Bakrania v (1) Lloyds Bank (2) Souris [2017]

UKFTT 364 (PC)(Ann McAllister) 13/04/2017; [2017] 4 WLUK 347; LTL 16/5/2017

Application by B to rectify register and restore ownership of house to B from purchaser S and remove Bank's registered charge. Property hijacking case in which alleged by B that fraudsters had pretended to be registered owners of house, forged B's signatures to various documents and sold house to S, who had purchased it with a mortgage loan from the Bank. Rectification refused.

Re Angel Group Ltd [2015]

EWHC 3624 (Ch); [2016] 2 BCLC 509; [2016] BPIR 260

Whether and, if so, when administrators should be discharged and the terms and manner in which joint liquidators should be permitted to separate their functions between themselves to address conflicts of interest.

TPL Holdings Limited; Hurd v TPL Holdings Limited 25 March 2014

(A G Bompas QC); [2014] 3 WLUK 672

– Whether an unfair prejudice petition and just and equitable winding up petition should be struck out where the primary conduct complained of had been remedied.

Bank of Scotland v Breytenbach [2012]

BPIR 1

Bankruptcy of partners – whether section 285(3)(b) Insolvency Act 1986 required leave to issue professional negligence proceedings against a partnership, where two of the partners were bankrupt. Whether there was jurisdiction to grant retrospective leave or leave nunc pro tunc to commence proceedings against a bankrupt given conflicting authorities of *Re Saunders* [1997] Ch 60 and *Re Taylor* [2007] Ch 250.

Cozens v Revenue and Customs Commissioners [2012]

UKFTT 228 (TC); [2012] 3 WLUK 932

Appeal against assessment to excise duty in respect of alleged inward diversion fraud; hardship application by appellant in respect of obligation to pay assessed excise duty before tribunal will entertain appeal.

Secretary of State for Business, Innovation & Skills v Chohan [2011]

EWHC 1350 (Ch); [2012] 1 BCLC 138

Directors disqualification - whether the Claimant should be required to clarify allegations relating to a defendant's involvement in an unauthorised collective investment scheme, which the Claimant alleged was unlawful pursuant to the Financial Services and Markets Act.

Revenue & Customs v Cozens [2011]

EWHC 2782 (Ch); [2012] STC 420; [2012] Lloyds Rep FC 86; [2011] STI 3047

Excise duty inward diversion fraud. In considering whether to continue a world-wide freezing order, the circumstances in which the court will infer a risk of dissipation from underlying allegations of fraud where there is limited solid evidence that the defendant has assets.

Beattie v Smailes (No.2) [2011]

EWHC 3865 (Ch); [2012] BPIR 341

Whether fees under retrospective CFA should be taken into account in assessing a payment on account of costs.

John Smith & Co (Edinburgh) Ltd v Hill [2010]

] EWHC 1016 (Ch); [2010] 2 BCLC 556

Whether reversioner could sue in nuisance in respect of an alleged temporary nuisance by the presence of scaffolding; whether administrators personally liable in tort for nuisance.

Re Sixty UK Ltd; Ryohin Keikaku Europe Ltd v Hollis & O'Reilly [2010]

BPIR 1234

Whether guarantor of tenant who had paid sums in respect of rent was entitled to be reimbursed such sums as

an administration expense; extent of agreement by administrators to pay rent as an administration expense; guarantee-stripping – construction of terms of CVA and whether guarantor entitled to prove in CVA in respect of liability for rent of closed store; alleged surrender of lease by operation of law.

Thornhill v Atherton (No.2) [2008]

BPIR 691

Bankruptcy annulment on condition that bankrupt pay trustee's costs. Extent to which trustee entitled to realise bankruptcy estate to pay his costs where no other creditors.

Hill v van der Merwe [2007]

EWHC 1613 (Ch); [2007] BPIR 1562

Appeal against refusal to adjourn private examination and application to set aside order on the ground that the application should not have been made ex parte. Prima facie case of fraud by fresh air invoicing took case out of ordinary and administrators needed information urgently concerning genuineness of book debts in early stages of administration.

Wilson v Whitehouse [2006]

EWCA Civ 1688; [2007] BCC 595; [2007] BPIR 230

Assignment of causes of action for misfeasance - bidding competition - interests of expense creditors - relevance of public interest in not to stifle misfeasance claims. Appeal by shareholder and disappointed bidder against assignment of cause of action to director dismissed.

Kappler v Secretary of State for Trade & Industry [2006]

EWHC 3694 (Ch); [2006] BCC 845; [2008] 1 BCLC 120

Appeal against disqualification order; "causing" rather than "causing or allowing" fresh air invoicing; inference of actual knowledge; procedural fairness and amendment of charges.

Murphy v Goss 1 June 2006

(HHJ Wyn Williams QC) LTL 4/9/2006

Enforcement of charging order by creditor in respect of bankrupt's home, which had purportedly been assigned by trustee in bankruptcy to fictitious person concocted by bankrupt. Deed of assignment held to be forged and a nullity.

Secretary of State for Trade & Industry v Cockayne and Dixon 11 April 2005 (HHJ Norris QC)

LTL 23/11/2005

Directors disqualification; amendment of r.3 statement in support of application should be allowed so as to bring real issues before the court if that could be achieved without substantial prejudice to defendant – however amendment allowed only subject to sanction in costs, including interim award of costs of £50,000 against SofS.

Secretary of State for Trade & Industry v Swan (No. 2) [2005]

EWHC 603 (Ch); [2005] EWHC 603 (Ch); [2005] BCC 596

Directors disqualification; Class 1 transaction, extent of duties of CEO to ensure compliance with Listing Rules; whether CEO ought to have discovered cheque kiting; duties of non-executive director to investigate complaints.

Dyment v Boyden and Bishop [2004]

EWCA Civ 1586; [2005] 1 WLR 792; [2005] BCC 79; [2005] 1 BCLC 163

Appeal against dismissal of financial assistance claim under s.151 CA 1985 dismissed as (i) appellant had failed to show that the alleged financial assistance (company's liability to pay rent under a lease) had been given before or at the same time as the relevant acquisition of shares and (ii) the obligation undertaken by appellant was in any event not "for the purpose of" the acquisition of shares within the meaning of s.151(s) CA 1985.

Re Uno plc & World of Leather Plc [2004]

EWHC 933 (Ch); [2006] BCC 725

Directors disqualification; test case on customer deposits; allegation of unfitness that directors had continued trading without taking adequate steps to protect deposits of cash paying customers of World of Leather furniture business. Directors continued trading with reasonable prospect of achieving a corporate solution and thereby avoiding insolvent liquidation and with the benefit of professional advice. Application dismissed.

Dyment v Boyden and Bishop [2004]

EWHC 350 (Ch); [2004] BCC 946; [2004] 2 BCLC 423

An agreement for the separation of a joint venture partnership and company, which included an agreement that the company pay an increased rent to the out-going shareholders did not amount to financial assistance in breach of s.151 Companies Act 1985. The liquidator's decision to accept a proof of debt from the out-going shareholders in respect of the rent due from the company could not therefore be challenged.

UK Hydrosides Ltd v Stern 9 July 2004

(Peter Prescott QC); LTL 9/7/2004; [2004] 7 WLUK 258

Extension of time for creditor's appeal against decision of chairman of meeting of creditors and for application to revoke IVA granted as only 1 day late, honest mistake about time limit, arguable substantive case and no prejudice to debtor.

Secretary of State for Trade & Industry v Gill [2004]

EWHC 175 (Ch), [2005] BCC 24

Directors disqualification; the directors were entitled to have the case against them at trial strictly limited to the allegation of unfitness as clarified in a letter from the SofS's solicitors.

Secretary of State for Trade and Industry v Swan [2003]

EWHC 1780 (Ch); [2004] BCC 877

Directors disqualification; correct procedure where the evidence in the affirmation in support of the application did not support the gravity of the allegations of unfitness. Pre-issue conduct by the SofS, duty of fairness and failure to interview director.

Hicks v Gulliver [2002]

BPIR 518

Whether bankruptcy petition was an abuse of process due to improper collateral purpose of petitioner.

Talling v Lawrence [1999]

BPIR 414

Whether security for costs should be ordered against trustee after assignment of cause of action back to bankrupt.

Re Coney [1998]

BPIR 333

Bankruptcy annulment; meaning of "unable to pay his debts"; acid test was cash flow insolvency.

Wilton-Davies v Kirk [1998]
1 BCLC 274; [1997] BCC 770

Unfair prejudice petition in respect of quasi-partnership; successful application for interim relief by way of appointment of receiver.

Re Eileen Davies [1997]
BPIR 619

Whether conditions should be imposed on granting leave to commence proceedings against a bankrupt

Re CS Holidays Ltd [1997]
1 WLR 407; [1997] BCC 172; [1997] 1 BCLC 341

Directors disqualification; whether failure of director of company to resign where company trading whilst insolvent was unfit conduct.

Re Debtors (Nos. 13A IO and 14A IO of 1994) [1995]
1 WLR 1127; [1996] 1 All ER 691; [1996] BCC 57

Effect of interim order in respect of IVA - whether landlord required leave for peaceable re-entry.

Re a Debtor (No. 32 of 1993) [1994]
BCC 438

Bankruptcy petition - whether offer to secure or compound was unreasonably refused by creditor under s.271(3) IA 1986.

Cooper and Kears v Saunders 25 November 1991 (CA) [1991]
11 WLUK 323

Summary judgment to enforce option agreement to purchase land. Interpretation of option agreement – purchase price held to be market value at date of exercise of option agreement including any uplift due to golf course planning permission obtained by claimant between date of option and exercise by claimant of option.



CAREER AND ASSOCIATIONS

Campbell College, Belfast

Pembroke College, Oxford (BA Jurisprudence 2.1)

Inns of Court School of Law

Called to the Bar (Lincolns Inn) 1989

Council Member of Insolvency Lawyers Association

Member of the Chancery Bar Association

PUBLICATIONS

Insolvency and the Enterprise Act 2002 (Jordans)

Mithani: Directors' Disqualification (Butterworths)



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