



[Home](#) ♦ [Our People](#) ♦ [Phillip Gale](#)

Phillip Gale

♦ [Back](#)



Year of Call: 2008

E: phillipgale@enterprisechambers.com

T: 020 7405 9471

Clerk: Raj Lamba

PRACTICE AREAS

Insolvency & Restructuring

Property

Commercial

Company

PROFILE

Phillip has a busy commercial chancery practice with expertise in contentious insolvency, company, civil fraud, property, and contractual disputes. He is regularly instructed in disputes where those practice areas overlap, for example, fraud claims arising in insolvency.

Phillip's current and recent caseload includes:

- Succeeding at trial in "hybrid" Part 7/insolvency proceedings covering breaches of duty and antecedent transaction claims. Phillip acted for the successful litigation funder: *Manolete v Bell*

[2024] EWHC 1636 (Ch)

- Obtaining a bankruptcy order against Pragnesh Modhwadia, alleged to have misappropriated £57 million from the client account of the successor firm to Ince & Co
- Representing the provisional liquidator of a partnership in an appeal against a freezing order (with Christopher Brockman). This is an important Court of Appeal authority on the circumstances in which it will be appropriate for insolvency office-holders applying for freezing orders to give a limited cross-undertaking in damages: *Hunt v Ubhi* [2023] EWCA Civ 417; [2023] Bus LR 1827.
- Representing the assignee of a company in liquidation in a claim against the directors for £12m of misappropriated VAT
- Obtaining freezing and search orders against the directors of a company involved in a labour supply fraud.
- Acting for the joint administrators of a company which had a long lease of an abandoned development of 119 flats. The administrators made various applications to unlock the complex series of property and security interests over the site to enable a sale of a clean title and a return to creditors and investors.

According to the directories, Phillip's "advice is clear and his drafting is accurate. He is calm when presenting the case" and is "courteous and professional".

PRACTICE AREAS

Insolvency & Restructuring

Insolvency litigation forms a major part of Phillip's practice.

Phillip has extensive experience of claims involving misfeasance, transactions at an undervalue, preferences, transactions defrauding creditors and wrongful trading. He has particular knowledge of "hybrid" proceedings requiring a Part 7 claim form and an insolvency application (e.g. *Manolete v Bell* [2024] EWHC 1636 (Ch)) and the procedural issues these can throw up.

Phillip often acts for officeholders (or litigation funders) where the insolvent company and its creditors have been the victim of fraud. For example, he has obtained search and freezing orders against directors of a company involved in a labour supply fraud. He has successfully defended another such freezing order (concerning an underlying £12m VAT fraud) against a sustained discharge application (Rajah J – 19 February 2024). Phillip also appeared in the Court of Appeal (together with Christopher Brockman) in a case setting out the circumstances in which an office holder will be able to obtain a freezing order against a limited cross-undertaking in damages: *Hunt v Ubhi* [2023] EWCA Civ 417; [2023] Bus LR 1827.

Phillip also has experience of cases where appointments (or pre-appointment petitions/applications) become contested or give rise to knotty problems. For example,

On the bankruptcy side, Phillip obtained (in May 2024) a bankruptcy order against Pragnesh Modhwadia, alleged to have misappropriated £57 million from the client account of the successor firm to Ince & Co. He has a track record in reported cases on some of the more technical aspects of bankruptcy (see Significant Cases below) including a rare example of successfully setting aside a matrimonial consent order as a transaction at an undervalue. Phillip also has particular experience of bankruptcy proceedings where there are mental capacity issues relating to the debtor.

On the bankruptcy side, Phillip acted for the successful trustee in setting aside a matrimonial consent order as a transaction at an undervalue (*Green v Austin* [2014] BPIR 1176) and has particular experience of mental capacity issues arising in the context of bankruptcy proceedings (for example, *De Toucy* [2011] EWHC 3809 (Ch); [2012] BPIR 793. He also acted for the successful trustee in an application for possession and sale

where permission was given for a second appeal to the Court of Appeal on the proper test to be applied when a party failed to attend trial (for the first appeal, see *Roberts* [2016] EWHC 187 (Ch); [2016] BPIR 996; for the Court of Appeal (on a procedural point only) see [2018] EWCA Civ 569). Phillip recently acted in connection with a proposed IVA with creditor claims of over £150 million.

Property

Phillip's property practice frequently overlaps with his insolvency work. Property is often a significant asset within an insolvent estate and there is an obvious advantage in one counsel being able to advise on both aspects of any problem or dispute. For example (and as noted above), in *Prime Noble*, Phillip acted for the joint administrators of a company which had a long lease of an abandoned development of 119 flats. The administrators made various applications to unlock the complex series of property and security interests over the site to enable a sale of a clean title and a return to creditors and investors. Another example is possession and sale applications by trustees in bankruptcy; Phillip is regularly instructed where problems about equitable accounting, equity of exoneration, common intention constructive trusts or proprietary estoppel arise.

Phillip also advises and appears in pure property disputes where there is no insolvency background, in cases involving easements and covenants, trespass and nuisance, registration problems, TOLATA and possession claims, beneficial interest disputes and proprietary estoppel claims. For example, he has recently advised a lender which refinanced a housing development in southeast London whether any sums were due under an overage agreement registered against the freehold title and if so whether the lender was entitled to be subrogated to the rights of the original lender whose charge had been extinguished on the refinance.

Commercial

Phillip is a commercial chancery barrister dealing with a wide variety of commercial and contractual disputes.

Recent cases have involved a variety of fraud claims, warranty claims under a share purchase agreement and guarantees. He has obtained search and freezing orders against directors of a company involved in a labour supply fraud and successfully defended another such freezing order (concerning an underlying £12m VAT fraud) against a sustained discharge application (Rajah J – 19 February 2024). Phillip appeared in the Court of Appeal (together with Christopher Brockman) in a case setting out the circumstances in which an insolvency office holder will be able to obtain a freezing order against a limited cross-undertaking in damages: *Hunt v Ubhi* [2023] EWCA Civ 417; [2023] Bus LR 1827.

Company

Phillip regularly advises on director's duties and on dividends. He has particular experience of the interaction between derivative claims, unfair prejudice petitions and just and equitable winding up. He recently obtained permission to appeal from the Court of Appeal on the question to what extent a party who was not a director or shareholder or recipient of company property can be made secondarily liable for a share purchase order following the trial of an unfair prejudice petition.

Re Blue Co London LLP (formerly Ince & Co LLP) [2020]EWHC 2385 (Ch), [2021] 2 BCLC 289

This case arose out of the collapse of international law firm Ince & Co. The main administrations were being conducted as main proceedings in England and Wales. Former partners of Ince & Co France had nevertheless sued the administrators in France. Phillip (led by Stephen Davies KC) successfully obtained the court's sanction for the administrators to apply to the French courts for the dismissal of claims brought against them by former partners in Ince & Co France.

PGH Investments Ltd [2021]EWHC 533 (Ch); [2021] BCC 659; [2021] 2 BCLC 436

This was one of the first cases to consider the "coronavirus test" in the temporary provisions introduced relating to winding up petitions by the Corporate Insolvency and Governance Act 2020. Whilst Phillip succeeded in demonstrating that the winding up petition should be dismissed as there was a dispute as to the debt said to be owing under a guarantee, the judge went on to consider that an "indirect" financial effect was sufficient for the purposes of the coronavirus test.

Sandelson v Mulville [2019]EWHC 1620 (Ch); [2019] BPIR 1253, upheld on appeal at [2019] EWHC 3287 (Ch); [2020] BPIR 392

A debtor attempted to argue that the obligation to pay the settlement sum due under a settlement agreement was a "dependent" obligation such that non-payment could not form the basis of a bankruptcy petition. Phillip (led by Jeremy Goldring QC) successfully argued that the payment obligation was an "independent" obligation which could be pursued by bankruptcy petition and that previous Court of Appeal authority relating to a share purchase agreement should be distinguished.

Carter v Hewitt [2019]EWHC 3729 (Ch)

Phillip acted for the successful trustee in bankruptcy in reversing a district judge's dismissal of an application for possession and sale. The district judge had applied to wrong test, ought not to have dismissed the application and did not appreciate the effect of the automatic re-vesting provisions under section 283A.

Hunt v Ubhi [2023]EWCA Civ 417; [2023] 4 All ER 530; [2023] 2 All ER (Comm) 887; [2023] Bus LR 1827; [2023] 2 BCLC 632

The provisional liquidator of a partnership had obtained a freezing order against its partners. The provisional liquidator gave a cross-undertaking in damages limited to the net realisations in the insolvent estate. Christopher Brockman and Phillip Gale acted for the provisional liquidator on the appeal but not below. The

Court of Appeal gave guidance on the circumstances in which it may be appropriate for the court to accept a limited cross-undertaking. Consideration was also given to the powers of a provisional liquidator of a partnership to apply for freezing orders.

Manolete v Bell [2024]

EWHC 1636 (Ch)

Phillip acted for the successful litigation funder in this “hybrid” Part 7 / insolvency claim involving breaches of director’s duties and the antecedent transaction provisions of the Insolvency Act 1986.

Re a Co; J Carney Construction Ltd v Manchett Cleaning Ltd [2018]

EWHC 1101 (Ch)

Application to restrain presentation of a winding up petition before Mr Justice Birss. Phillip acted for the successful applicant.

Endersby v Astrosoccer 4 U Ltd [2017]

12 WLUK 168

Contested administration application.

Hussein v Haus of Vanity Ltd [2017]

EWHC 2615 (Ch)

The sole director of a company transferred its assets to a new company controlled by her before presenting a petition to wind up the old company claiming to be a creditor. A dispute arose between the director and opposing contributories and Chief Registrar Briggs' judgment considered whether the petitioner was a creditor and how the court’s just and equitable jurisdiction should apply.

Roberts [2016]

EWHC 187 (Ch); [2016] BPIR 996 (first appeal); [2018] EWCA Civ 569 (second appeal, procedural point only)

Decided that the final hearing of a trustee’s application for possession and sale was a “trial” for the purposes of CPR 39.3. The judgment provides useful guidance as to what constitutes a trial and the appropriate test to be applied when considering applications to set aside orders made when one party fails to attend a hearing. Phillip acted for the successful trustees in bankruptcy. Permission for a second appeal was granted by the Court of Appeal (but was ultimately dismissed owing to various procedural defaults on the part of the appellant).

Allanfield Property Insurance Services Ltd [2015]

EWHC 3721 (Ch); [2016] Lloyd's Rep IR 217

An application for directions by administrators of insolvent insurance intermediaries raising questions as to the operation of CASS5 of the FCA Handbook.

Green v Austin [2014]

BPIR 1176

A rare example of a matrimonial consent order being set aside as a transaction at an undervalue post-Hill v Haines. Phillip acted for the successful trustee in bankruptcy.

Inbakumar v United Trust Bank Limited [2012]

EWHC 845; [2012] BPIR 758

A judgment debtor sought to set aside a statutory demand on the basis of additional claims he had in the same proceedings involving co-sureties and valuers. Phillip successfully resisted the appeal to Vos J (as he then was) on behalf of the Respondent bank.

Marquis Francois-Eudes De Louville De Toucy v Bonhams 1793 Limited [2011]

EWHC 3809 (Ch); [2012] BPIR 793

An appeal against a bankruptcy order dealing with the interaction between bankruptcy law and mental capacity. Phillip acted for the Respondent auction house.

CAREER AND ASSOCIATIONS

Member of the Chancery Bar Association

Member of the Property Bar Association

Member of the Insolvency Lawyers' Association

Member of INSOL International

MA Jurisprudence, Worcester College, University of Oxford

Bachelor of Civil Law (BCL), Worcester College, University of Oxford

Bar Vocational Course, City Law School

Called to the Bar (Lincoln's Inn) 2008

Lord Denning and Levitt Scholarships

Between 2008 and 2009, Phillip worked as a research assistant at the Law Commission in the property, family and trusts team.

PUBLICATIONS

Contributor to Butterworths Property Insolvency

"Opposing Lease Renewals on Ground (f)", Estates Gazette, 9 September 2017 (with Georgina Redsell)

"Grappling with the 1995 Landlord and Tenant Act", Estates Gazette, 14 July 2018 (with Georgina Redsell)



LONDON

9 Old Square
Lincoln's Inn
London
WC2A 3SR

T 020 7405 9471
E london@enterprisechambers.com

BRISTOL

60 Queen Square
Bristol
BS1 4JZ

T 0117 450 7920
E bristol@enterprisechambers.com

LEEDS

Fountain House
4 South Parade
Leeds
LS1 5QX

T 0113 246 0391
E leeds@enterprisechambers.com

NEWCASTLE

65 Quayside
Newcastle upon Tyne
NE1 3DE

T 0191 222 3344
E newcastle@enterprisechambers.com

Barristers regulated by the Bar Standards Board.

CONNECT WITH US

