

WHALEY

ESTATE LITIGATION

The Professional Experience of

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Designated as a Certified Specialist in Estates and Trusts Law
by the Law Society of Upper Canada, October 2006

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WHALEY ESTATE LITIGATION: May 2007

Details and reported cases WWW.WHALEYESTATELITIGATION.COM

DICKSON MACGREGOR APPELL LLP: September 2001, Partner, Estate Litigation

Regularly advises, provides legal opinions in respect of, facilitates resolution and settlement of and litigates in the following areas:

HULL & HULL: October 2000 through 2001: Estate, Trust, Capacity Litigation

BORDEN & ELLIOT: April 1998 – January 1999: Corporate Department
Reported to Winn Oughtred

BEALE AND COMPANY: September 1995 – April 1998:

- WILL AND ESTATE CHALLENGES
- WILL AND TRUSTS INTERPRETATIONS
- DEPENDANT'S SUPPORT APPLICATIONS
- GUARDIANSHIPS
- CAPACITY/INCAPACITY ISSUES
- TRUSTS DISPUTES
- POWER OF ATTORNEY LITIGATION
- FIDUCIARY LITIGATION
- PASSING OF ACCOUNTS
- SOLICITOR'S NEGLIGENCE

I was involved in trials at the High Court; County Court; Official Referees' Court; Privy Council and Industrial Tribunals. I reported directly to the partners of the Firm and had a high level of client exposure.

FINANCE LITIGATION:

Co-ordination and Case Management of a large, high-profile set of group action claims against a Bank in Compulsory Liquidation under the Insolvency Act 1986. This large-scale corporate litigation comprises approximately 80 – 100 claims involving insolvency-related issues in addition to employment matters, breach of contract, deceit, fraudulent misrepresentation and stigma. There were also various claims arising against the Bank's auditing and accountancy advisors.

I had approximately 25 cases advising on the merits of claims, instructing Counsel, attending conferences, negotiations and co-ordination meetings with the Bank's legal advisors.

I assisted in preparing these cases for trial until the time of my resignation from Beale & Co. Preparation included discovery, the taking of Witness Statements, Expert Reports, coordinating the collation of documents and all other steps up to and including trial. I additionally coordinated a 'Library of Evidence' which was intended to be utilized for the benefit of 300 clients. Further I negotiated case-management and strategy with the opposition in an effort to consolidate claims and take forward a "Group Action litigation".

Alongside the main actions there were various other claims against insurers, auditors and on behalf of net creditors in respect of salvage costs.

- **Advising on a Personal Guarantee put forward by a leading Bank. The Bank in conjunction with the Client's Company was trying to enforce a substantial guarantee on the client as a Director, but non-shareholder. Various employment law issues arose out of the situation, which required advice and a strategic approach**
- **Advice and research on several contentious and non-contentious matters involving liabilities under Mortgage Deeds and The Banking Act**
- **Assisting on a large claim by a Bank against a Turkish Bank. The Turkish Bank specialized in loan finance for the agricultural sector that arranged finance through the Claimant to finance cotton exports. My involvement included research and advice on various legal issues, including arranged loan finance, letters of credit, facility agreements, first-demand bonds, Turkish Exchange Control Regulations, Bretton Woods Agreement, condition precedents, contractual points and debt recovery. This case settled by Tomlin Order**

GENERAL COMMERCIAL LITIGATION: - Case Management and handling of:

- **Two Partnership Disputes – including advice on the provisions of Partnership Agreements and Statutory applications thereof, breach of duty of good faith/confidentiality, dissolution, and the litigious procedural steps connected therewith. Involvement in negotiations, facilitation of settlement and the drafting of Partnership Agreements and Lease Transfers**

- **Personal Injury cases –**

Acting for the plaintiff against The Highway Authority & Local County Council

Acting for the plaintiff in a civil action involving a road/traffic accident

- **A contentious employment case regarding the constructive dismissal of an employee arising out of a fixed term contract**
- **A contentious employment case, acting on behalf of the Defendant/Employer in defending a claim brought by an employee for unfair dismissal. The employee lost the entitlement to drive due to drunk driving and a term of the employment contract provided for dismissal in this event; the employee has brought an additional claim against the employer for spiking his drinks which led to the drunkenness hence dismissal**
- **An employment case involving the transfer of undertakings re a cleaning contract. Advising on TUPE regulations and termination notice thereof**
- **Other employment contentious and non-contentious – unfair and wrongful dismissal; redundancy; maternity rights; racial discrimination; and the right to return to work on a part-time basis**
- **Two professional negligence cases representing the Plaintiff – both of which settled prior to Trial. One action involved pursuing a claim against the client’s accountants/business advisors for failure to provide sound business advice leading to the loss of properties/businesses. The second involved Solicitor’s negligence and negotiations with the SIF**
- **A breach of warranty claim arising out of the sale of a business. This case is a County Court matter and was handled entirely by me, including the drafting of all pleadings, instructing Counsel, attending conferences, experts and witnesses, advising on contractual issues including the warranties and liability. This case reached a negotiated settlement**

CONSTRUCTION LAW LITIGATION:

Research, advice, and general assistance with the handling of cases involving litigation relating to the following:

- **ACE Conditions of Agreement 3 (1984) 1990; ACE 1995 Agreement B(1);**
- **Advice re: acceptance of a Deed Of Appointment;**
- **Written opinion and advice re: JCT Management Contract 1987; and**
- **ICE (6th edition) 1991 – advice re: clause 66 decision and the effects of clauses 12 and 14**

- FIDIC – Civil Engineering (Red Book, 4th edition);
- FIDIC – Electrical and Mechanical Works;
- Construction (D & M)R 1994 – examined approved code of practice in course of advising clients;
- Consideration of Consultancy Agreements for Quantity Surveyors, Architects, Structural and Mechanical Engineers;
- Collateral Warranties (COWA/F 3rd ed., 1993; COWA/P & T 2nd ed., 1992);
- Assignment/Novation, Performance Bonds – research and advice; and
- Consideration of particular clauses and contract production
- A 4 – month trial in the Official Referee’s Court re a claim by a Local Authority against a Contractor for breach of contract and damages for nuisance, negligence, interference with an easement and the collapse of a retaining wall. The claim was in excess of 1 million pounds and involved many complex legal, procedural and technical issues. My involvement included preparation for trial, conferences with Counsel, attendance throughout the course of trial and present during legal argument, cross-examination, examination-in-chief, submissions and judgment
- Involvement in acting on behalf of a firm and consulting structural engineers, in a third party claim brought by a first Defendant. The third party claim was consolidated in the main proceedings, a claim brought by the Plaintiff arising out of the construction of a food research laboratory. The main contractor claimed for measured works in respect of the final account and for loss and expense on a contract overrun by 21 weeks, of which the project architect had certified 8 weeks. The main contractor and its services sub-contractor, a 2nd party, claimed that 14 weeks critical delay was caused by re-organization of services in roof plant-rooms and installation of services support steelwork. The plaintiff denied the main contractor was entitled to sums claimed because of alleged breaches of a preliminary services agreement. The plaintiff also claimed from its professional consultants any sums re measured works and loss/expense; defaults in performance of services. The claim was worth approx. 2 million, there were 17 pre-trial reviews; trial was adjourned 5 times by up to 15 months and the case finally settled for 1.6 million with our client contributing 400,000 pounds

COMPANY/COMMERCIAL:

I sat with the partner – head of the department for 6 months, and the Company partner who specializes in tax and international acquisitions for 3 months:

Incorporation of professional partnerships involving the creation of new management structures and advising on:

- **Drafting Memorandum and Articles of Association**
- **Rights relating to different classes of shareholders', protection of minority interests, drafting shareholders' agreements and director's service agreements**
- **The transfer of existing contractual arrangements and drafting of novation agreements for both retired partners/clients**
- **Loan agreements, debentures and security documentation**
- **TUPE and the employment law aspects relating to incorporation including the consultation of employees, appointment of employee representatives, and the implementation of new contracts of employment**
- **The provision of management, consultancy, and technical services to the company by the existing partnership**
- **Employee benefit trusts, share options and profit sharing scheme rules, pension schemes, transfer agreements, company documentation, statutory forms, filing**
- **Tax implications – CGT, IHT, Stamp Duty and overall tax structure**
- **Personal tax and estate planning**
- **Advice on re-registration of an unlimited company to a limited company**

Involved in acquisitions and disposals for U.K. and International clients: -

- **Drafting purchase and sale agreements, disclosure letters, deeds of indemnity, powers of attorney and company completion documentation**
- **Ensuring corporate compliance**
- **Advice on taxation issues/tax deeds**
- **Advice on shareholders' rights and director's duties and liabilities**

- **Conduct of due diligence procedures**
- **Incorporation of companies in both the U.K. and off-shore jurisdictions including the British Virgin Islands, Cayman Islands, Gibraltar, Isle of Man, Ireland, Mauritius, and the Marshall Islands**
- **Company documentation, statutory forms, filing, registration and resolutions, general upkeep of company books**
- **Commercial contracts – transfer of business, agency, distribution, franchising and licensing agreements**