

## CHARLES SAMEK QC

Silk: 2009 | Call: 1989



Charles Samek QC is a highly experienced and renowned commercial advocate and Queen's Counsel. First and foremost is his determination to achieve success for his client by a combination of hard work, thorough preparation, clear and compelling advocacy before first-instance judges and appellate courts, and, at trial, his fearless cross-examination of witnesses.

Charles specialises in commercial domestic and international dispute resolution and has special expertise in commercial / civil fraud and asset tracing, worldwide freezing orders and other interim protective relief, committal and contempt proceedings, Russian & Ukrainian & CIS disputes, private international law cases on jurisdiction and registration and enforcement of judgments, shareholder and shareholder agreement claims, banking, financial and investment disputes, commodities disputes and commercial employment claims. In addition to having acted for Mr Sergei **Pugachev** in 2017, since 2015 Charles has been acting in the latest round of the **BTA Bank v Abyazov** litigation, in new proceedings brought by the bank against Mr Abyazov's son-in-law, Mr Ilyas **Khrapunov**, Charles' client. In January 2018 Charles appeared in the Supreme Court (leading Marc Delehanty) on Mr Khrapunov's behalf seeking to overturn a Court of Appeal judgment which *inter alia* confirmed English jurisdiction for the bank's claims.

Charles acted throughout in the seminal **Dadourian Group International v Simms** commercial fraud litigation which spawned the *Dadourian Guidelines* (on the enforcement of the worldwide freezing orders abroad). He also acted as lead counsel in the third Dadourian Court of Appeal case, a leading case on fraudulent misrepresentation claims. He has also been acting for the special administrator of **Cyprus Popular Bank** in its litigation against the now deceased Greek tycoon, Andreas **Vgenopoulos**, most recently successfully in the Court of Appeal in January 2018 which confirmed the applicability of the registration process under the European jurisdictional materials to worldwide freezing orders granted by the courts of member or contracting states, and that notification of such orders to third parties such as banks do not constitute enforcement not permitted during any appeal against registration.

He has acted in several cases involving foreign law including BVI, Ukrainian, Italian, German, New York, Icelandic, UAE, Iranian, Saudi (Hanbali School).

Charles is an international arbitration practitioner and is a member of the LCIA European Users Council. He has acted in relation to LCIA arbitrations and has recently acted as one of a three-arbitrator panel for an LCIA arbitration.

In appropriate cases Charles may act for commercial clients who wish to instruct counsel directly.

For a number of years Charles chaired the White Paper annual conference on commercial fraud and asset tracing. Most recently he was a speaker and panel member at the 2015 C5 Fraud conference in Geneva, speaking on the privilege against self-incrimination in civil fraud claims. He is speaking again at the 2017 C5 Fraud Conference on "Conspiracy Claims in International Fraud Cases". He lectures regularly on commercial law and topics have included: the enforcement of Russian arbitral awards in England; worldwide freezing orders; the use of improperly or unlawfully obtained evidence for use in litigation; tortious interference in contractual relations.

Charles has also lectured on interim remedies to Ukrainian lawyers in Kiev and on issues relating to ISDA swaps agreements and public authorities to Italian lawyers and public officials. He gave a demonstration of witness cross-examination to selected invitees at the Court of Appeal in Milan.

Charles is listed as a leading QC for commercial dispute resolution and fraud (civil) by Chambers UK as well as for commercial litigation and fraud (civil) by Legal 500. Recent highlights in the directories include the following:

**"A superb advocate with razor-sharp recall, who fights tirelessly and reads the tribunal well." "He's fantastically hands-on, and a very user-friendly and talented advocate." "Extremely bright, hard-working and responsive." "A tenacious, creative and determined fraud lawyer."** (Chambers & Partners 2018)

**"Incredibly impressive: a great strategist and polished advocate." "Excellent on civil fraud and injunctions particularly."** (Legal 500 2017)

**"He's an outstanding advocate. He has real presence in court and you can see that the judges really listen to him. He came across really well." "He is extremely bright, hard-working and responsive." "Very clear in terms of his thinking, advice and advocacy." "A fantastically hands-on, very user-friendly and talented advocate."** (Chambers & Partners 2017)

**"A fearsome cross-examiner, thanks to his rigorous mind and thorough preparation." "A real fighter, who will die in a ditch before he will let his client lose."** (Legal 500 2016)

**"A fantastic team player and a very punchy performer who is very down to earth." "A superb tactical adviser and a first-rate advocate." "He is very diligent." "Amenable, great with clients, and very sensible." "He's a proper street-fighter."** (Chambers UK 2016)

**"A very punchy advocate and a great tactician." "An incredibly clear and logical thinker, exactly the silk you need."** (Legal 500 2015)

**"An accomplished advocate favoured by instructing solicitors for commercial cases generally and civil fraud cases in particular. Sources appreciate his hands-on, collaborative approach." "He is very, very user-friendly, very hard-working, very good at being part of a team and a very effective advocate. He's particularly strong on injunctions." "Fantastically hands-on and a talented advocate."** (Chambers UK 2015)

**"Shows absolute dedication to the task in hand and is a great lateral thinker." "Displays outstanding professionalism and first-class commercial acumen."** (Chambers UK 2015)

**"An excellent, punchy advocate, who is a real team player and excellent on injunctions."** (Legal 500 2014)

**"A great asset to any case: he turns uncertainty into victory."** (Legal 500 2014)

**“Sources are quick to point to the quality of his advice and advocacy in commercial disputes.” “A real team player, who is able to get to grips with difficult applications under huge time pressures.”** (Chambers UK 2014)

**“...noted for his experience of securing and discharging injunctive relief.” “Incredibly user-friendly and very much one of the team.”** (Chambers UK 2014)

**“An impressive litigator”** with a special **“talent for identifying and presenting the key issues in very complicated commercial disputes.”** (Chambers UK 2013)

#### Associations & Memberships

- COMBAR
- Commercial Fraud Lawyers Association
- LCIA European Users Council
- International Bar Association
- Chancery Bar Association
- London Common Law and Commercial Bar Association
- Commercial Fraud Lawyers Association
- British Russian Law Association
- British Italian Law Association

Charles Samek QC is also a member of the Bar of the Eastern Caribbean Supreme Court (Territory of the British Virgin Islands) and has appeared on all occasions successfully before the BVI Commercial Court and the Eastern Caribbean Court of Appeal.

Charles was educated at St. Paul's School and Oriel College, Oxford University where he read Literae Humaniores (Latin and Greek Literature, Greek and Roman History, Modern and Ancient Philosophy). He speaks Italian (excellent) and French (good).

## Civil Fraud

Recent cases of interest include:

- **JSC BTA Bank v Khrapunov** [2018] UKSC 19 - Charles appeared for Mr Khrapunov leading Marc Delehanty in what is now the leading English case on the scope of the tort of unlawful means conspiracy and on the application of the Brussels / Lugano jurisdiction scheme to such claims.
- **Cyprus Popular Bank Public Co Ltd v Vgenopoulos** [2018] EWCA CIV 1 - Charles appeared for the successful appellant, Cyprus Popular Bank, in the leading English appellate case on the application of the Brussels / Lugano enforcement of judgments regime to foreign worldwide freezing order and on the meaning and interpretation of the English procedural rules and the Brussels / Lugano scheme to what matters constitute 'enforcement' and which are thus prohibited within the period of an appeal against registration of a foreign judgment.
- **JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev** [2017] – Charles acted for Mr Sergei Pugachev in litigation with the claimants arising out of the insolvency of JSC Mezhdunarodniy Promyshlenniy Bank, a subsidiary liability Russian judgment against him and an English default judgment

enforcing the former. Reported judgments at [2017] EWHC (Ch) 1751; 1767; 1847; 1853.

- **JSC BTA Bank v Khrapunov** [2017] 2.5.17 (HHJ Waksman QC) – Successful application for the defendant to amend his application to set aside a freezing order for material non-disclosure so as to add further grounds of alleged non-disclosure and alleged misleading of the Court by the claimant.
- **GFH Capital Ltd v Haigh et al.** [2017] Charles is currently instructed by one of the defendants in Commercial Court litigation against David Haigh, formerly of Leeds United FC. The present action concerns the claimant's attempt to register a Dubai money judgment against Mr Haigh and parasitic claims against third parties.
- **Abela v Baadarani** [2017] – Charles is instructed by defendants who are resisting fresh proceedings brought by the claimants on the back of default judgment obtained against the principal defendant, Mr Baadarani. There has been a decision (unreported) by Nugee J in relation to a Third Party Debt Order and a Norwich Pharmacal Order which is the subject of an application for permission to appeal to the Court of Appeal.
- **Cyprus Popular Bank Co Ltd v Vgenopoulos** [2017] 2 WLR 67 – Charles is instructed by the claimant in relation to the registration in England of a Cypriot worldwide freezing order. There has been a decision by Picken J on the issue of enforcement pending appeal against registration which is on appeal and due to be heard in the Court of Appeal in late 2017. See also [2016] EWHC 1695 (QB) where Charles (leading James McWilliams) obtained a domestic freezing injunction in support of the Cypriot WFO.
- **JSC BTA Bank v Mukhtar Ablyazov & Ilyas Khrapunov** [2015-2016]. Charles is instructed for Mr Ilyas Khrapunov in Commercial Court proceedings brought against him and Mr Ablyazov by the Bank. There have been a number of reported cases and in March 2017 the Court of Appeal gave judgment in relation to the scope and ingredients of the tort of conspiracy by unlawful means and service out of the jurisdiction under the Lugano Convention on an appeal from Teare J [2016] 3 WLR 659: see **Khrapunov v BTA Bank** [2017] EWCA Civ 40. See also [2016] EWHC 289 (privilege against self-incrimination) & [2016] EWHC 1346 (cross-examination on assets). Charles is leading Marc Delehanty from Littleton. **Louis Dreyfus Commodities MEA Trading DMCC v Concorde pour L'Industrie et L'Exploitation SPRL** [2015] EWHC (Comm) 1711. Worldwide freezing order and anti-suit injunction obtained to restrain proceedings in Democratic Republic of Congo; unsatisfactory disclosure of assets by Defendants; Charles (acting for Louis Dreyfus) successfully obtaining order for cross-examination of Fourth Defendant as to assets of all Defendants
- **PJSC Vseukrainskyi Aktsionernyi Bank v Sergey Maksimov and others** [2014] EWHC 3771 (Comm). 5-day committal hearing against first defendant for alleged breach of two worldwide freezing orders. Burden and standard of proof. Whether necessary to prove every component of each allegation of contempt. Obligation of directors of companies subject to the injunctions.
- **PJSC Vseukrainskyi Aktsionernyi Bank v Sergey Maksimov and others** [2014] EWHC 1958 (QB). Applicability of Art 6 ECHR to committal proceedings. Right of defendant to be present at hearing. Public interest in contempt proceedings. Whether proper question is whether there can only be a fair trial if the defendant participates or rather whether notwithstanding an inability to participate, there can nevertheless be a fair trial.
- **Sheikh Saoud Bin Abdullah M. Al-Thani v Affat** [2014] EWHC Ch (Barling J, Nugee J, Asplin J) (Three applications) Worldwide freezing order obtained against defendant in relation to fraud relating to obtaining title to property; court also ordered passport delivery-up orders, that the defendant should not leave the jurisdiction and arrest orders. Bench warrant also issued. Discussion of court's powers so to do. Further case of judgment in default being entered against defendant.

- ***PJSC Vseukrainskyi Aktsionernyi Bank v Sergey Maksimov and others*** [2013] EWHC 3203. Further proceedings in which Charles successfully resisted an application by the Twenty-Seventh Defendant (“Carlsbad”) to discharge the worldwide freezing order granted by Field J as referred to in the case below. Carlsbad applied to discharge on various grounds including that there was no good reason to suppose on further evidence which it sought to adduce that its assets belonged to D1; that there was no jurisdiction to serve the arbitral claim form and WFO against it out of the jurisdiction and that there was insufficient connection with England. Blair J rejected the application and maintained the freezing order.
- ***PJSC Vseukrainskyi Aktsionernyi Bank v Sergey Maksimov and others*** [2013] EWHC. English proceedings supporting an LCIA arbitration in which Charles acted for a Ukrainian bank. He successfully obtained WFO relief against the arbitrating counterparty as well as worldwide relief against domestic and foreign defendants pursuant to the Court’s so-called Chabra jurisdiction. The CC granted the order against the foreign defendants, although out of the jurisdiction and appearing not to have assets in UK, on the principal basis that the relief was in support of an English arbitration, whereby the seat of the arbitration was here and the substantive law of the dispute was English.
- ***Shetty v Al Rushaid Petroleum Investment Company*** [2013] EWHC 1152 (Ch). Multi-million-dollar counterclaim, brought by a leading Saudi Arabian gas and oil drilling conglomerate, for conspiracy, bribery and breach of duty (under Saudi law) arising out of the receipt of secret commissions from suppliers under gas and oil drilling contracts (JV project for Saudi Aramco).
- ***Rossetti Marketing Ltd v Diamond Sofa Co Ltd*** [2012] EWHC 354 (QB). Dispute between Thai furniture manufacturer and its English commercial agent. Charles successfully obtained the discharge of a freezing order on grounds of insufficient evidence of risk of dissipation.
- ***Governors of the Bank of Ireland v Bailey*** [2012] EWHC QB. Claim brought by bank against defendant employee for alleged making of secret profits. Charles successfully obtained the discharge of a freezing order on grounds of insufficient evidence of risk of dissipation.
- ***Shetty v Al-Rushaid Petroleum Investment Co*** [2011] EWHC 1460. Claim for secret commission arising out of oil/drilling contracts. The court held that it had the power to add a party as a defendant in order for all claims to be pursued in one jurisdiction, even though no claim was made against that party.
- ***Clickstream Technologies plc v Christopher Wightman*** [2011]. Instructed to represent the defendant CEO in proceedings for fraud and the unlawful obtaining of secret profits arising out of his stewardship of the claimant technology company.
- ***Spearmint Rhino Ventures (UK) Ltd v Warr*** [2011]. Retained to act for the former business partner of the founder of the Spearmint Rhino business in a dispute relating to alleged secret commissions.
- ***KBC (UK) Ltd v Total Asset Ltd (in admin.) & Dartnell*** [2011]. Instructed for the individual defendant in relation to an alleged £130 million ‘Ponzi’ scheme. (Commercial Court)
- ***Hotel Cipriani Srl v Cipriani International SA and others*** [2011]. Instructed for the defendants on their application to discharge a worldwide freezing on the grounds, amongst other things, of material non-disclosure relating to without prejudice discussions held between the parties following the claimant’s success against the defendants for passing off.
- ***Dadourian Group Int’l v Simms*** [2009] 1 Lloyd’s Reports 601. Claim for fraudulent misrepresentation inducing entry into an option agreement for the purchase of hospital equipment in Bangladesh. Charles successfully resisted an appeal against the trial judge’s findings of liability and quantum. The case is important as regards the principles for assessing and proving damages for deceit, and on when the court will discharge a freezing order where it has failed on some of the claims in court even though it has won overall. Guidance was also given by the Court in relation to applications to strike out appeals on the

grounds of alleged forgery of documents and perverting the course of justice.

- **Dadourian Group Int'l v Simms** [2008] EWHC 1784. Court permitted use by claimant of allegedly unlawfully obtained evidence on the grounds that the documents were not subject to legal professional privilege or, if they were, the so-called 'fraud exception' applied. See also related decision at [2007] EWHC 2634 dismissing application against claimant for delivery-up of such evidence on grounds that claimant was not party to original order.
- **Primus Telecommunications v Kumar** [2007]. Acted for the defendant in a £3m commercial fraud claim relating to pre-paid telephone cards. Allegations involved dishonest manipulation of computer security systems and the forgery of documents.
- **Dadourian Group Int'l v Simms** [2007] 2 AER 329. Permission to use evidence obtained under compulsion from a defendant under a freezing order, for purposes other than for policing the freezing order.
- **Dadourian Group Int'l v Simms** [2006] 1 WLR 2499. Establishment of Court of Appeal guidelines on the enforcement of worldwide freezing orders abroad: "the Dadourian Guidelines".

## Commercial Litigation

Recent cases of interest include:

- **Emmott v Michael Wilson & Partners, Ltd** [2017] EWCA Civ 367 – appellate case concerning construction and application of CPR 72.10 to monies in court – consideration of interests of secured creditor – effect of prior judgment ordering payment out of sums.
- **Michael Wilson & Partners Ltd v Sinclair** [2017] EWCA Civ 3 – Charles (leading Adam Solomon) was successful before the Court of Appeal in overturning a decision of Teare J ([2012] EWHC 2560 (Comm)) striking out the claimant's claim for abuse of process on the grounds that the fundamental basis of the claim had been determined against it in a prior related arbitration between it and a third party. The case will now proceed to trial in the Commercial Court. See also the linked case below ([2015] C P Rep 45).
- **Michael Wilson & Partners Ltd v Sinclair** [2017] EWCA Civ 55 – Charles (leading Adam Solomon) was again successful before the Court of Appeal in overturning a decision of Whipple J. The Court of Appeal held that the correct CPR rule for (in general) applying for stays of execution of money judgments, including of registered foreign judgments, was CPR 83.7 rather than under CPR 3.1(2)(f). It also held that the judge's alternative exercise of discretion based on the correct rule was flawed and that there was no basis for disturbing the usual 'pay-as-you-go' rule. **AmTrust Europe Ltd v Trust Risk Group SpA** [2016] – in a suite of Commercial Court hearings before Blair J, Charles (Leading Alexander Robson) successfully acted for the defendant Italian brokerage house in resisting claims for further injunctive relief and amendments to allege corruption of a Milanese arbitral tribunal trying claims between the same parties and to allege attempted extortion of one of the claimant's directors.
- **St Vincent European General Partner Ltd v Robinson** [2016] EWHC 2920 (Comm) – Charles (leading Rupert D'Cruz) successfully resisted a jurisdiction challenge to English proceedings in relation to a Cypriot-law shares pledge. The Court accepted Charles' arguments that the English court was bound to take jurisdiction even though the shares pledge contained a Cypriot exclusive jurisdiction clause because it was bound to recognise a prior Cypriot High Court ruling that the English Court had jurisdiction.
- **Hertel v Saunders** [2015] 5 Costs L R 825. Charles (who had not acted below) successfully persuaded Morgan J to overturn a Master's decision that an offer letter in an alleged partnership / joint venture dispute was a Part 36 offer letter. Interpretation of CPR Part 36 and consideration of necessary conditions

for an offer to be a Part 36 offer; Morgan J ruling that an offer made after proceedings had commenced and relating to an intended claim was not a Part 36 offer.

- **Michael Wilson & Partners, Ltd v Sinclair** [2015] C P Rep 45. Charles (leading Adam Solomon) successfully persuaded a full Court of Appeal to set aside an order of Lewison LJ refusing to lift a stay on an appeal (against a 2012 order of Teare J) and thereafter striking out the appeal; relief from sanctions; CPR 3.1(7); change of circumstances. The consequence is that the appeal will now proceed to be heard in 2016. (The appeal raises important questions about the interplay between litigation and arbitration, and specifically it raises the issue as to whether an arbitral decision as between A and B should bind A in subsequent litigation between A and C.)
- **AmTrust Europe Ltd v Trust Risk Group Spa** [2015] EWCA Civ 437. Dispute between insurer and broker regarding priority of jurisdiction and applicable law clauses in framework agreement and Lloyds standard form terms of business agreement. Issues concerned the role of the court of appeal in hearing appeals against judge's orders on allocation of jurisdiction and the applicability of the "one-stop shop" Fiona Trust presumption in two-contract cases.
- **Rossetti Marketing Ltd v Diamond Sofa Inc** [2012] C P Rep 45 re Commercial Agents Regulations. Dispute between Thai furniture manufacturer and its English commercial agent. Charles successfully persuaded the Court of Appeal to hold that the agent had acted in breach of fiduciary duty and duties under the Commercial Agents (Council Directive) Regulations 1993 by failing fully to disclose its acting for other manufacturers producing competing products. The Court also, contrary to the decision of the lower court, expressly left open the question of whether termination of a commercial agency on the grounds of after-discovered reasons could disentitle the agent from compensation under Regulations 15 and 17.
- **Mainline Private Hire Ltd v Nolan** [2011] EWCA Civ 189. In this case of alleged conversion of a motor vehicle, the Court of Appeal held that a contractual bailee was not to be regarded as having possession because of an absence of exclusivity of possession and intention to possess, and even though the contract of bailment provided otherwise and was not sham.
- Breach of development agreement. Advised a development company in relation to possible claims for breach of a development agreement for Alexandra Palace (2010).
- **Newcastle International Airport v Parkin** [2011-2012] Civil Liability (Contribution) Act 1978 re Part 20 third party proceedings. Retained to advise and represent the interests of the former CEO of a major regional airport following the settlement of proceedings brought against him for conspiracy and fraud, the subsequent commencement of proceedings by the airports against their former solicitors for professional negligence and the solicitors' bringing contribution proceedings against the former CEO.

## Banking & Financial Services

Recent cases of interest include:

- **Agate Assets SA v Banque Privee Edmond de Rothschild Europe SA et al** [2017] – Charles is instructed by the large Italian pension fund in litigation concerning declaratory relief in relation to €30m loan notes backed by Commerzbank bonds and a third party unsecured loan.
- **Dexia Crediop SpA v Provincia Brescia** [2016] EWHC 3261 (Comm) – Charles (leading Craig Ulyatt of Fountain Court Chambers) acted for the Italian public authority defendant in Swaps litigation against Dexia and Deutsche banks. This case concerned a jurisdiction battle in relation to competing English and Italian exclusive jurisdiction clauses. Reported at [2016] EWHC 3261 (Comm.).
- **Isis Investments Ltd v Kaupthing Bank h.f. & Elfar Adalsteinsson** [2013] EWCA Civ 1493. Acted for

the successful respondent, Mr Adalsteinsson, in this case which clarified the meaning and scope of 'lawsuits pending' in Article 32 of the EC Directive on the Reorganisation and Winding Up of Credit Institutions (Directive 2001/24/EC).

- **Dexia Crediop SpA v Provincia Di Crotona**, Commercial Court. Charles acted for the defendant, an Italian municipal authority, which successfully resisted a summary judgment application brought by Dexia Crediop to dispose of major parts of the Defence and Counterclaim in this swaps claim. (2013)
- **Isis Investments Ltd v Oscatello Investments Ltd, Kaupthing h.f. & Adalsteinsson** [2013] EWHC 7 (Ch). Instructed on behalf of Icelandic investors seeking to make recovery following investments into corporate structures relating to the acquisition and sale of the Somerfield supermarket chain by entities and trusts controlled by Vincent and Robert Tchenguiz.
- **Isis Investments Ltd v Oscatello Investments Ltd & others** [2012] EWHC 645 (Ch). Permission granted to claimant Manx liquidator to add new claims seeking to set aside a framework agreement purportedly creating a trust of up streamed profits consequent on sale of underlying corporations and order that representative party for investors remain a party to the proceedings on grounds that they had sufficient interest in proceedings.
- **Isis Investments Ltd v Adalsteinsson** [2010] EWHC 724 (Ch). Successfully obtained summary judgment for the defendant for breach of an investment sub-participation agreement. The judge stayed a costs order in favour of the defendant purportedly pursuant to the provisions of the Cross-Border Insolvency Regulations. Permission to appeal was granted by the Court of Appeal and the matter settled shortly thereafter.
- Advising Kuwaiti investor in relation to possible claims under the Financial Services and Markets Act 2000 following investments made on the Kuwaiti stock exchange by telephone from England (2012).
- Advising ex-England footballer in relation to possible claims against bank in relation to management of portfolio of investments before and after the collapse of Lehmann Brothers in September (2008).
- **Tahmassebi v Persia International Bank plc** [2007] Pens LR 297. Charles successfully acted for the defendant Iranian bank in its defence of a seven-figure pension claim brought by its ex-general manager.

## Employment / Corporate Director & Officer Litigation

- **Sharp Clinical Services (UK) Ltd v Bhandari** (2013 - 2014) Acting for claimants in ongoing Commercial Court litigation between company and former directors relating to alleged breaches of share sale agreement and directors' duties in and about causing company to act as guarantor under a bond trust deed.
- **Michael Wilson & Partners, Limited v Sinclair** (2012 - 2014) Acting for claimant leading Kazakh law firm in ongoing Commercial Court litigation in relation to alleged establishment by ex-employees and alleged co-conspirator third parties of competing business.
- **Air Liquide UK Limited v GN Grosvenor Limited** (2013) Acted for claimant in successful search order and freezing order application in Chancery Division in relation to patent infringement, passing off, breach of copyright, conspiracy and breach of employment duties regarding alleged theft and misuse of liquid gas cylinders and falsification of records.
- **Shetty v Al Rushaid Petroleum Investment Co** (2013) Acted for former MD of Saudi oil and gas drilling company in claim against him in conspiracy and breach of fiduciary duty regarding alleged making of secret profits on oil and gas drilling contracts (12 day Chancery Division trial).
- **Newcastle International Airport Limited v Parkin** (2008 - 2012) Acted for first defendant ex-CEO in Chancery Division action brought against him by ex-employer regional airport in relation to alleged



wrongful procurement of contractual benefits and breach of fiduciary duty. (Action settled on eve of trial). Then acted for same ex-employee in subsequent contribution proceedings brought by defendant solicitors.

- **Bank of Ireland v Bailey** (2011) Acted for successful defendant ex-employee in fraud acting in obtaining discharge of freezing injunction in Queen's Bench Division.
- **Clickstream Technologies plc v Christopher Wightman** (2011) Acted for first defendant director in freezing order proceedings related to his alleged misappropriation of company funds.
- **Arjent Limited v Perdon** (2011) Acted for defendants on injunctive application by claimant ex-employer for enforcement of post termination restrictive covenants.

## Jurisdiction Disputes & Anti-suit Injunctions

- **JSC BTA Bank v Mukhtar Ablyazov & Ilyas Khrapunov** [2015-2016]. Charles is instructed for Mr Ilyas Khrapunov in Commercial Court proceedings brought against him and Mr Ablyazov by the Bank. There have been a number of reported cases and in December Charles was in the Court of Appeal in relation to the scope and ingredients of the tort of conspiracy by unlawful means and service out of the jurisdiction under the Lugano Convention on an appeal from Teare J [2016] 3 WLR 659; judgment reserved. See also [2016] EWHC 289 (privilege against self-incrimination) & [2016] EWHC 1346 (cross-examination on assets). Charles is leading Marc Delehanty from Littleton.
- **St Vincent European General Partner Ltd v Robinson** [2016] EWHC 2920 (Comm) – Charles (leading Rupert D'Cruz) successfully resisted a jurisdiction challenge to English proceedings in relation to a Cypriot-law shares pledge. The Court accepted Charles' arguments that the English court was bound to take jurisdiction even though the shares pledge contained a Cypriot exclusive jurisdiction clause because it was bound to recognise a prior Cypriot High Court ruling that the English Court had jurisdiction.
- **Cyprus Popular Bank Co Ltd v Vgenopoulos** [2017] 2 WLR 67 – Charles is instructed by the claimant in relation to the registration in England of a Cypriot worldwide freezing order. There has been a decision by Picken J on the issue of enforcement pending appeal against registration which is on appeal and due to be heard in the Court of Appeal in late 2017. See also [2016] EWHC 1695 (QB) where Charles (leading James McWilliams) obtained a domestic freezing injunction in support of the Cypriot WFO.
- **Dexia Crediop SpA v Provincia Brescia** [2016] EWHC 3261 (Comm) – Charles (leading Craig Ulyatt of Fountain Court Chambers) is acting for the Italian public authority defendant in Swaps litigation against Dexia and Deutsche banks. This case concerned a jurisdiction battle in relation to competing English and Italian exclusive jurisdiction clauses.
- **Emmott v Michael Wilson and Partners** [2016] EWHC 3010 (Comm) – Charles (leading Dan McCourt Fritz of Serle Court) acted for the defendant in anti-suit injunction proceedings brought by the claimant to restrain proceedings in New South Wales, Australia.
- **AmTrust Europe Limited v Trust Risk Group SpA** [2015] EWHC 1927 (Comm) successfully resisting (with Alexander Robson) on behalf of Italian med/mal insurance broker application for anti-arbitration injunction brought by insurer in order to restrain Milan arbitration proceedings.
- **Trust Risk Group SpA v AmTrust Europe Ltd** [2015] EWCA Civ 437. Dispute over jurisdiction between arbitration in Milan under Italian law and litigation in England under English law. Consideration of applicability of Fiona Trust "one-stop" shop presumption.
- **Louis Dreyfus Commodities MEA Trading DMCC v Concorde pour L'Industrie et L'Exploitation SPRL** [2014] EWHC (Comm). Worldwide freezing order and anti-suit injunction obtained to restrain proceedings in Democratic Republic of Congo.

- ***Polymer Vision R&D Ltd v Van Dooren*** [2012] ILPr 14. Claim for misrepresentation and breach of contract against a Dutch liquidator in relation to a settlement agreement. The court held that the so-called 'bankruptcy exception' in Art 1.2(b) of Council Regulation 44/2001 (the Judgments Regulation) applied so that jurisdiction could not be founded in England. Permission to appeal to the Court of Appeal was given; case settled thereafter.
- Advising Kuwaiti investor in relation to possible claims in English law and under English court jurisdiction following investments made on the Kuwaiti stock exchange by telephone from England (2012).
- ***Belletti v Morici*** [2010] 1 All E.R. (Comm) 412. Leading case on grant of worldwide freezing order relief pursuant to s.25 Civil Jurisdiction and Judgments Act 1982. Injunction granted in support of substantive Italian proceedings discharged on grounds that defendant not within jurisdiction and having no assets here. Applicability of para. 3.1(3) of PD6B.
- ***FKI Engineering Ltd v De Wind Holdings Ltd*** [2009] 1 All E.R. (Comm) 118. Appeal by German company against negative jurisdiction declaration based on inapplicability of Art. 6(1) of Council Regulation 44/2001 (the Judgments Regulation) to contingent claims.
- ***Crucial Music Corporation v Klondyke Management AG*** [2008] 1 All E.R. (Comm) 642. Claim for damages for breach of contract to acquire catalogue of musical sound recordings. Successfully resisted an appeal against the lower court's finding that jurisdiction could be founded under Arts 5(1) and 5(3) of the Judgments Regulation 44/2001.

## Eastern Caribbean (including British Virgin Islands) Instructions

Charles Charles is a member of the Bar of the Eastern Caribbean Supreme Court, Territory of the (British) Virgin Islands.

Since being called in July 2015, Charles has been instructed in the following cases in which he has been able to develop knowledge of and familiarity with the BVI Arbitration Act 2013, the BVI Business Companies Act 2004 (as amended), BVI Insolvency Act 2003 and BVI Insolvency Rules 2005, as well as the CPR of the Commercial Division.

- ***Emmott v Michael Wilson & Partners, Limited***[2016]. Application to wind up BVI registered company; BVI Arbitration Act 2013, Insolvency Act 2003 & Insolvency Rules 2005; Charles successfully obtained dismissal of petition on behalf of the company - 1/2 day hearing before Justice Barry Leon, Commercial Judge. Charles also successfully obtained the dismissal of a further petition presented by Mr Emmott in late November 2016 at a 1-day hearing before Wallbank J ruling that there was no evidence that the defendant was insolvent.
- ***SFC Swiss Forfeiting Company Limited v Swiss Forfeiting Limited*** [2016]. Allocation of jurisdiction; investment trusts; Charles successfully obtained the setting aside of service of proceedings in the BVI on behalf of the defendant - 1/2 day hearing before Justice Barry Leon, Commercial Judge. Charles also was successful in the landmark Eastern Caribbean Court of Appeal (Blenman, Michel and Webster JJA) in resisting the claimant's appeal against that ruling. This decision is now a leading case in this legal area and is reported online at <https://www.eccourts.org/sfc-swiss-forfeiting-company-ltd-v-swiss-forfeiting-limited/>
- ***Sakraney v Portillo Holdings Corp. & Primate Target Developments Inc.*** [2015]. Shareholder dispute; construction of memorandum and articles of association; right of transferee to be registered as member; rectification of share register; BVI Business Companies Act 2004 (as amended) - 3 day trial before Justice

Barry Leon, Commercial Judge.

Charles is happy to act for parties litigating in the Eastern Caribbean jurisdiction and (by virtue of the above) has substantial experience of acting in, and familiarity with, the BVI Commercial Court and ECCA.

Please contact Charles' clerks if you are interested in instructing Charles in a Caribbean case. The clerks are well versed in the practicalities of engagements in that jurisdiction and formalities at the London end can be effected speedily.

## Arbitration

Charles has acted as advocate in arbitrations: eg. for a group of shareholders in an LCIA arbitration concerning a shareholders' dispute in an alcohol producing company; he has also acted in another LCIA arbitration in a dispute concerning Ukrainian grain infrastructure

Charles was one of three arbitrators in an LCI arbitration last year (5 days) concerning the international supply and importation of cold rolled steel. Charles is current acting as 1 of 3 arbitrators in an LCIA arbitration regarding a commodities dispute and on an UNCITRAL arbitration.

Charles is a member of the European users' council of the LCIA.

Recent litigation concerning arbitration:

- ***AmTrust Europe Ltd v Trust Risk Group SpA Queen's Bench Division*** (Commercial Court), 08 June 2016 (Blair J) – successful resistance of amendments to allege corruption of Milan arbitration
- ***AmTrust Europe Ltd v Trust Risk Group SpA*** [2015] 2 Lloyd's Rep. 231 – successful resistance of anti-arbitration injunction in respect of Milan arbitration
- ***Trust Risk Group SpA v AmTrust Europe Ltd*** [2016] 1 AER (Comm) 325 - ***dispute over jurisdiction between*** arbitration in Milan under Italian law and litigation in England under English law
- ***PJSC Vseukrainskyi Aktsionernyi Bank v Sergey Maksimov and others*** [2013] EWHC 3203 – successful resistance of application to discharge s. 44 Arbitration Act 1996 WFO
- ***Michael Wilson & Partners, Ltd v Sinclair*** [2015] C P Rep 45 – strike out application based on alleged abuse of arbitral process, raising the question of whether in legal proceedings between A and B, B can rely on findings adverse to A made in an arbitration between A and C