



# Sebastian Said

Call 2004

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Sebastian Said practises in the Cayman Islands at the leading litigation practice in that jurisdiction, Appleby (Cayman) Limited.

He is also a Door Tenant at Fountain Court and is authorised by the Bar Standards Board to accept instructions in his main areas of practice where circumstances allow. For further information about the scope of Sebastian's practice and availability to assist with litigation in London or elsewhere, please contact Chambers' Senior Clerk, [Alex Taylor](#), on +44 (0) 207 842 3706.

Sebastian has a broad experience of commercial law cases, both in an onshore and offshore context, from his practice in London, the Channel Islands and the Cayman Islands. His main practice areas are:

Sebastian has acted in high-profile litigation and advisory matters for the following corporate clients: Aspinall's Club, Bank Julius Baer, Barclays, Gazprom, Generali, HBO, HSBC, ISS, KPMG, Lloyds TSB, Man Financial, NatWest, Nimax Theatres, Northern Rock, Perella Weinberg Partners, Pokerstars, Queen's Park Rangers FC, Rawlinson & Hunter, Royal Bank of Canada, RBS, Saipem and the Solicitors' Regulation Authority. Individual clients have included festival promoter Vince Power and hedge fund manager Alexander Jackson.

He has a particular interest in disputes relating to investment funds and fund managers. He has advised on the \$1billion claim by the liquidators of the RMBS fund set up by The Carlyle Group (Carlyle Capital Corporation Limited), the derivative claim relating to the \$1 billion Tetragon CDO fund (and the related Silverstein proceedings in New York), as well as the claim against the directors of the collapsed Arch Cru funds (all in the Royal Court of Guernsey). In the Cayman Islands, he has advised a redeeming shareholder on potential claw-back claims that might be issued by the Joint Liquidators of the well-known collapsed fund vehicle, Weavering Macro Fixed Income Fund Limited, as well as advising unpaid redeemed investors in other distressed fund vehicles.

With Patricia Robertson QC, he is the co-author and editor of the chapter on Fund Managers, in the leading professional negligence text, Mark Simpson QC and Lord Hoffmann (eds.), *Professional Negligence and Liability*.

He also publishes articles in his main practice areas – the most recent being published by the *Hedge Fund Law Review* (on Hedge Fund Side Letters, with Christopher Russell).

# Expertise

## Notable cases

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- *Barclays Bank plc v. Ritchie Structured Investments Limited* (2013, Financial Services Division; Grand Court of the Cayman Islands): Acting (with Jeremy Walton, instructed by Linklaters, New York) for Barclays in giving effect to a letter of request from a US Court for the examination of three former directors of various investment funds. The funds had borrowed c.US\$1.2 billion from Barclays to make significant investments in entities which formed a part of the Petters Group – later exposed as a Ponzi Scheme.
- *Boeing v. RSC Energia and others* (US District Court, Southern District of California) advising (with Jeremy Walton and Gillian Duffy) the Defendant Russian state space agency, RSC Energia, on Cayman law issues arising from a claim by Boeing in respect of a Joint Venture between leading space technology and aeronautical engineering companies in the US, Russia, Ukraine and Norway for the creation of a service called “Sea Launch” to send commercial satellites into orbit from redesigned oil platforms.
- Acting (with Stephen Moverley Smith QC and David Herbert) in a successful application, on behalf of an SPV owned by a Florida Bank, in the Grand Court of the Cayman Islands (before Hon. Justice Andrew Jones QC) for a freezing injunction brought in support of a US\$43 million claim under the Cayman Islands’ Fraudulent Dispositions Law (akin to section 423, Insolvency Act 1986: transactions at an undervalue and to defraud creditors) against a well-known Florida property developer who had transferred US\$70 million into an offshore trust, in the face of claims, and later judgments, by his banking creditors in Florida. Assisted with researching the relevant Cayman, Jersey and Florida law on transactions defrauding creditors, first draft skeleton, affidavit evidence and draft pleading. Involved co-ordinating freezing injunction and Norwich Pharmacal applications in the Bailiwick of Jersey (with Advocates Gleeson and Staal at Dickinson Gleeson) and freezing injunctions, depositions and post judgment proceedings in Florida (Al Frevola, Jim Carroll and Jerry Tamayo at Conrad and Scherer LLP).
- Advising (with David Herbert) the Royal Bank of Canada in New York on potential claw-back claims by the Cayman Islands liquidator of Weaving Macro Fixed Income Fund. Advice given in connection with the potential settlement of NY proceedings brought by the assignee of derivative transactions which used Weaving as part of the notional reference portfolio. RBC had hedged their risk on the notional portfolio by purchasing actual Weaving shares, which were redeemed for a payment of cUS\$5m shortly before the discovery of the fraud at the fund: see the well-known decision that the directors were liable for a complete failure to discharge their duties, with judgment entered against them for US\$111 million: *Weaving Macro Fixed Income Fund (in liquidation) v. Peterson and others* (Grand Court of the Cayman Islands, before Hon. Justice Andrew Jones QC).
- Acting (with Stephen Moverley Smith QC and James Noble) in a just and equitable winding up petition (in the Grand Court of the Cayman Islands, Financial Services Division, before Hon. Justice Cresswell) brought in respect of a high technology company operating mainly in China and the GCC states. The case involved allegations of dishonest breach of fiduciary duty, viz. the misappropriation of share capital of US\$9.2 million by the sole director. The seven day hearing raised issues of quasi-partnership, lack of probity, need for an investigation, oppression and alternative remedies. There were parallel US proceedings (in the US District Court, Western District of Washington) for, *inter alia*, securities fraud. The case also involved interesting ancillary questions as to the admissibility of evidence taken by deposition in the US, pursuant to s1782, USC, in circumstances where the deponent was not willing to formally testify in the Cayman proceedings. Petitioner’s team, from Appleby, led by Peter McMaster QC.



- *Propinvest Group Limited (in Administration) v. Glenn Maud and others*; (Bailiff Collas, Royal Court of Guernsey, 2012): Acting (with Advocate Ferguson) for a non-party caught by a freezing order preventing the exercise of a share pledge. The shareholder had control of the UK's 4<sup>th</sup> largest property, 25 Canada Square in Canary Wharf. Successful variation of the freezing order relying on *Fourie v. Le Roux* [2007] UKHL 1. Case reported in FT.
- *SPL Guernsey ICC Limited v. Addison and others (The "Arch Cru" Litigation)* (Royal Court 2012): Acting (with Advocate Le Tissier) for English D&O insurers in relation to regulatory and civil proceedings arising from a major investment fund scandal in England and Guernsey. There are two sets of English civil proceedings and one set of Guernsey civil proceedings. There are significant regulatory investigations underway by both the Guernsey Financial Services Commission and the FSA. (Arch Cru is the first case in which the FSA has used its consumer redress powers under s404, FSMA 2000). Advice on the powers of the Guernsey Financial Services Commission and various initial procedural issues. Subsequently advised on whether conflicted in acting for director, subject to insurer's reservation of rights. Subsequently acting (with Advocate Le Tissier and Adam Cole with Paul Stanley QC and Tom Smith) for, Robert Addison, the First Defendant Director in the US\$170 million claim alleging breach of the director's duty of care in monitoring alternative investments made by the UK based investment manager. Also involved allegations of conflict of interest. Questions asked in House of Commons; case followed in FT, Guardian and on BBC.
- *Perpetual Media Capital Limited v. Enevoldsen and others*, (Royal Court of Guernsey, 2012): Acting (with Advocate Le Tissier and Adam Cole) for a Guernsey company SPV in relation to failed film finance investments in the films "*Machete*", "*Ironclad*" and "*Game of Death*". US\$10 million claim issued against the former directors of the company for failing to act properly in making bridge finance investments prior to permanent financial close.
- Advising Russia's largest company, Gazprom, on a potential civil fraud and equitable tracing claim seeking to recover US\$150 million said to be the proceeds of a fraud committed by a former Prime Minister of Ukraine, Pavel Lazarenko (for which he had been convicted and imprisoned in California).
- Advising Pokerstars, the world's largest online poker company, on potential insolvency issues arising out of their US\$731 million settlement of high profile forfeiture proceedings issued by the United States Department of Justice against Full Tilt Poker, Pokerstars and Absolute Poker. Case reported in Forbes, The Times and FT.
- Advising (with Peter McMaster QC, Barney Lee, Chet Pohl and Cora Wadsworth) a hedge fund on the regulatory and criminal aspects of having paid a former Egyptian Government Minister consultancy fees. Research on EU judicial review case law in which the listings of those deemed to be connected to terrorism have been successfully annulled (e.g. *Kadi v. Council of the European Union*) to assess the potential for successful challenge. Advising in conjunction with Freshfields, who were also providing advice to the Fund on the equivalent concerns from a UK perspective, and Andrew Mitchell QC and Peter McMaster QC.
- *Jackson v. Dear* (Royal Court of Guernsey, 2011; before Lieutenant Bailiff Talbot QC): Acting (with Advocate Le Tissier and Michael Todd QC and Philip Gillyon) for the Plaintiff in bringing the first minority shareholder derivative action before the Royal Court. The US\$50 million claim is against all the directors of one of the world's leading CLO hedge funds, listed on Euronext, with US\$1.2 billion AUM, in respect of a decision to invest \$100 million in a start up real estate fund manager. The legal issues include whether Guernsey law should adopt the exceptions to the rule in *Foss v. Harbottle* or a similar position to that contained in the Companies Act 2006. The case also involved (a) detailed consideration (with Dutch lawyers, Loyens and Loeff) of the operation of Euroclear in order to dematerialise the Euronext listed shares to allow the shareholder to be entered on the register and thus be clearly permitted to bring the derivative claim i.e. not just a beneficial holding through a broker; (b) the first claim under s34 Protection of Investors Law (the equivalent of s150 FSMA) (c) the first directors duties claim under the Companies Law 2008 (d) the first claim



under the Authorised Closed Ended Investment Scheme Rules and (e) an application for an injunction seeking to restrain expenditure of company funds on litigation. Defence teams included Lord Grabiner QC, Simon Mortimore QC, Camilla Bingham, Peter de Verneuil Smith and Robert Turner of Simmons and Simmons.

- *Silverstein v. Knief* (Southern District of New York; 2011, Judge Rakoff): Providing to New York Attorneys, The Nelson Law Firm, (with Advocate Le Tissier) Guernsey law advice to be used by a defendant director in a US\$200 million claim alleging that the agreement of an IMA without a high water mark was in breach of fiduciary duty and had permitted the investment manager to “loot” the hedge fund. Related proceedings to *Jackson v. Dear*. Defence teams included Herb Wachtell of Wachtell, Lipton, Rosen and Katz, one of New York’s leading litigation firms. Case followed closely in financial press including the FT, Bloomberg etc.
- *Carlyle Capital Corporation Ltd (in liquidation) v. Conway* (Royal Court of Guernsey, 2010 onwards): Acting (with Advocate Wessels and Martin Jones) for the Liquidator of Carlyle Capital Corporation Limited (a 32x leveraged hedge fund set up by The Carlyle Group to invest in residential mortgage backed securities in 2006) in the \$1 billion claim in the Royal Court of Guernsey against the directors, the parent companies and the investment manager. Also advised on the conflict application made by the Defendants’ US lawyers.
- *Woodbourne Trustees Limited v. Generali Worldwide Insurance Company Limited* (Royal Court of Guernsey, 2010, before Lieutenant Bailiff Southwell QC): Acting (with Advocate Wessels and Martin Jones) for Generali Worldwide Insurance Company in a two-week trial in the Royal Court concerning various points of construction of the contractual terms of a \$30 million investment in a range of funds through a life insurance wrapper. The claimant was the trustee of trusts controlled by the former owner of Celtic FC, Fergus McCann. The main legal issue was the proper role of the Court in reviewing an exercise of contractual discretion.
- Advised (with Advocate Wessels) on the voluntary winding up of Northern Rock (Guernsey) Limited so as to satisfy regulators’ concerns about customer prejudice.
- Advising (with Advocate Shepherd and Anthony Williams) HSBC on claims brought in New York by Irving H. Picard, the Trustee in the Liquidation of Bernard L. Madoff Investment Securities LLC. Advising in conjunction with law firms in New York (Cleary Gottlieb) and Switzerland (Lenz & Staehlin). Case followed on front page of FT.
- “*The PPI Litigation*”: *Barclays Bank plc and FIRSTPLUS plc*: Instructed (led by Christopher Moger QC and Andrew Mitchell) on behalf of the defendant Barclays’ group companies in respect of claims brought by customers for alleged mis-selling of payment protection insurance. Assisted with preparation of advice on overall strategy and the general legal analysis as well as acting in the individual claims (both by settling pleadings and acting in applications for pre-action disclosure).
- *Parabola Investments v Man Financial Limited [2009] EWHC 901; Parabola Investments v Man Financial Limited (No.2) [2009] EWHC 1492*: Instructed for the Second and Third Defendants (led by Michael Brindle QC and Jeffrey Chapman) in this four-week high-profile £90 million trial in the Commercial Court (before Flaux J) involving allegations of fraud, breach of contract and breach of fiduciary duty made by the claimants (the investment vehicles of a day trader) against his former brokers (the case involved the sale of derivatives: CFDs and options in particular). Case followed in FT, Times, Telegraph, Daily Mail and City AM.
- *Chilean Investors v. ANZ*: Instructed for the claimants (led by Bankim Thanki QC, Derrick Dale and Philippa Hamilton) in a claim worth cUS\$30 million brought by 30 Chilean investors against the London branch of a major bank in relation to losses made on derivatives based on Russian National Debt. One aspect of the claim relied upon the statutory cause of action formerly provided by section 62 of the Financial Services Act 1986 and breaches of the IMRO rules.
- *Finlan v. Eyton Morris Winfield and Grant Thornton*: Instructed (led by Michael McLaren QC and Mark Simpson QC) in defending a £25 million negligence claim brought against a firm of solicitors in respect of an alleged failure to seek relevant information at the completion meeting of a management buy-out. The firm of accountants who acted in the buy-out were also defendants and were the subject of contribution

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proceedings by the solicitors firm. The claim was settled during trial on confidential terms but a preliminary issue on assignment was reported as *Finlan v. Eyton Morris Winfield* [2007] EWHC 914 (Ch); [2007] 4 All ER 143.

- *Re: Nimax Theatres and Really Useful Theatres*: Advised (led by Nicholas Stadlen QC, now Stadlen J) a purchaser of a portfolio of West End theatres as to whether restrictions in the sale and purchase agreement constituted an unlawful restraint of trade
- *"The Saipem 10,000"*: Instructed (led by Michael Crane QC and Veronique Buehrlen) for a multinational oil company claiming substantial damages in respect of losses suffered by it as a result of a major incident caused by an oil drilling ship while drilling off-shore Equatorial Guinea. The twelve week trial in the Commercial Court (before Cresswell J) on liability involved complex factual issues relating to both mechanical and computer software engineering and control systems, as well as commercially significant legal issues including: the true construction of contractual terms, entire agreement clauses, the duration of the warranties implied into a contract for the supply of goods and services and the circumstances in which a party can claim damages for losses suffered by another group company. The claim was settled prior to closing submissions.
- *Queen's Park Rangers Holdings Limited v. Lambert Smith Hampton Group Limited*: Instructed (led by Jeffrey Chapman) for QPR Holdings Limited, the company which owns and controls Queen's Park Rangers FC, in bringing a claim against a firm of surveyors and valuers in respect of the alleged negligent valuation of a training ground purchased from Wasps RUFC. The case raised similar issues in relation to the proper measure of damages on an undervaluation to those dealt with in the related reported case of *Trustees of Wasps v. Lambert Smith Hampton Group Ltd* [2004] EWHC 938 (Comm). The claim was settled at mediation pre-issue.
- *The Hollywood Funding Litigation: Lexington v. Tarlo Lyons*: Instructed (led by David Railton QC and Paul Sinclair) in a claim brought by an insurer against a solicitor and his Firm for their role in causing the insurer to suffer losses of cUS\$20 million in connection with underwriting film finance risks. This Commercial Court claim involved allegations of conspiracy, deceit and procuring breach of contract.
- *Campden Hill v. Chakrani* [2005] EWHC 911: Assisted Stephen Rubin QC throughout this two week trial in the Chancery Division (before Hart J) while a pupil. The case involved fraud and forgery by a solicitor. Cited in Goff and Jones, *The Law of Restitution* in their discussion of tracing.

## Education

- BVC (Very Competent), Inns of Court School of Law
- BCL (Distinction), Pembroke College, Oxford
- BA (Law) (Double First), Pembroke College, Oxford

## International Bar / Court Appointments

- Practices in the Cayman Islands

## Memberships

- Monk Prize in Law (Pembroke College, BA)
- Domus Scholarship for Law (Pembroke College, BA)
- Simms Prize for Best Performance in Criminal Justice Paper (Oxford University, BCL)
- Major Scholarship (Inner Temple, BVC)
- Research Assistant to the Director, British Institute of International and Comparative Law (2001)
- Researcher, AIRE (Advice on Individual Rights in Europe) Centre (2002)
- Volunteer Legal Adviser, Bethnal Green Legal Advice Centre (2005)
- Member, Bar Pro Bono Unit (2009)
- Assisted with the Inner Temple Schools Project: "Speakers for Schools" (2009)
- Barrister Member, Joint Academic Stage Board (2009)
- Bar Council, International Committee (2012)
- Assisted with the Social Mobility Foundation and Bar Council Bar Placement Week (2012)

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