

# SEBASTIAN SAID

PARTNER: CAYMAN ISLANDS



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## BIO

Sebastian Said is an English barrister and partner in the Cayman Islands' Dispute Resolution Practice Group, specialising in high-value international commercial litigation, in particular fund disputes, banking, insolvency and restructuring, fraud and asset-tracing, professional liability, and contentious trust disputes. He has represented clients in many of the most significant Cayman cases in his practice areas in recent years, including acting for clients in relation to the collapses of Weaving, Abraaj, Bear Stearns, 1MDB and Highland Capital Management.

Before joining Appleby he practised from Fountain Court Chambers, one of the English Bar's "magic circle", where he remains a door tenant. A highly experienced advocate, he leads teams handling substantial applications and trials before the Cayman courts, representing clients across all aspects of Cayman financial services, including hedge funds and their directors, fund managers, banks, law firms, trustees, companies, directors, shareholders, GPs and LPs of exempted limited partnerships, creditors of distressed Cayman entities, corporate bond-holders and their trustees, liquidators, and receivers.

Most of his experience is in complex cross-border cases, involving heavy Cayman litigation requiring strategic co-ordination with legal teams at leading on-shore law firms and chambers (in particular in London, New York, Hong Kong, Florida, California, Delaware, Connecticut, Russia, Dubai, and Brazil), often

working alongside leading insolvency, funds, banking and trust professionals in Cayman, as well as Appleby colleagues in the other major offshore jurisdictions.

Sebastian's current or recent clients include: BDO, Butterfield, Cayman National, The Commissioners of Her Majesty's Revenue and Customs, Fund Fiduciary Partners, Goldman Sachs, HSBC and Nordic Trustee. At various times he has also acted for: Aspinall's Club, Bank Julius Baer, Barclays, Gazprom, Generali, HBO, ISS, KPMG, Lloyds TSB, Man Financial, NatWest, NML Capital, Northern Rock, Pokerstars, Queen's Park Rangers FC, Rawlinson & Hunter, RBC, RBS, Saipem, Sberbank, and the Solicitors' Regulation Authority.

He has been consistently recommended by the Legal 500 in Cayman since 2014, having previously been recommended while in practice at the Bar in London. Legal 500 2017, commented that he was "the rising star"; in 2019 he was listed as a Next Generation Partner for Dispute Resolution in the Cayman Islands.

He is a regular speaker at conferences and presentations in his practice areas, including the World Litigation Forum in Amsterdam (on enforcement against offshore assets and *Norwich Pharmacal* disclosure applications), the STEP Cayman Conferences (mock court application on *Pugachev* and sham trusts, 2019; and ADR of trust disputes, 2020) and for CILPA (on Attorneys' obligations to former clients and the Code of Conduct).

With Patricia Robertson QC, he is the co-author and editor of the chapter dealing with the civil liability of Fund Managers, in Simpson QC and Lord Hoffmann (eds.), *Professional Negligence and Liability* (since 2006).

Before qualifying, and following a gap year on the Arthur Andersen Scholarship Programme, specializing in Corporate Tax, Sebastian studied Jurisprudence at Pembroke College, Oxford, where he took a Double First and was awarded a Domus Scholarship and the Monk Prize for the best performance in examinations at his college. He remained in Oxford to pursue the BCL, a Masters' degree in Law, for which he took a Distinction and was awarded the Simms Prize by the University. Whilst at Oxford, he was also invited to sit the examination for a Prize Fellowship at All Souls College. After working for Andersen Consulting, now Accenture, Sebastian was called to the English Bar in 2004, as a Major Scholar of Inner Temple.

He undertakes work for the Bar Pro Bono Unit, has volunteered to assist with the Social Mobility Foundation and Bar Council Bar Placement Week, and has acted as a mentor in the Cayman Finance Student Education and Work Experience Programme (2016, 2017 and 2018). He has served on the International Committee of the English Bar Council, and the Joint Academic Stage Board, the body responsible for the regulation of the academic stage of qualification for English barristers and solicitors.

His professional memberships include INSOL, the Recovery and Insolvency Specialists Association, STEP, CILPA, COMBAR, and the Chancery Bar Association.

## EXPERTISE:

### Insolvency and Restructuring

- **CHC Group (FSD, McMillan J)** Application for the appointment of JPLs, in support of a Chapter 11 restructuring of the CHC Group, within Cayman creditor petition proceedings. One of the leading recent Cayman cross-border restructuring matters.

- **Washington Special Opportunity Fund (FSD, Mangatal J):** Successful defence of a hedge fund on a just and equitable winding up petition alleging lack of probity and conflicts of interest on the part of the manager and directors, and that the fund, which was in soft-wind down, had lost its substratum. Case selected by The Lawyer as one of the leading offshore cases in the first half of 2016; now a leading Cayman authority on hedge fund petitions. Follow-on advice to the fund manager on settlement with the petitioning investors, exiting them from the fund, and the wind-down of the fund's remaining positions.
- **G3 Exploration (FSD, McMillan J):** Advising Nordic Trustee as petitioning creditor in respect of US\$180m in defaulted bonds on their creditor's winding up petition, and cross-application for appointment of JPLs in support of a potential restructuring. Security had been exercised by Nordic Trustee, appointing Borrelli Walsh as Receivers over shares owned by the issuer, proceeding alongside the petition. The first Cayman law authority on the approach to winding up petitions presented by secured creditors, and the principles to be applied to petition adjournments in the context of a provisional liquidation.
- **CQS Directional Opportunities Master Fund v. China Shanshui (Supreme Court of the State of New York):** Drafted Expert Evidence on the Cayman law effect of Mangatal J's decision in China Shanshui, as to whether striking out the petition for abuse of process rendered the petition proceedings a nullity. Evidence filed in support of Plaintiffs' opposition to a Motion to Dismiss in New York proceedings, based on the filing of the Cayman petition in China Shanshui constituting an Event of Default pursuant to a corporate bond issue.
- **Brookemil (FSD, Jones J)** Successful defence of a creditor's winding up petition brought on a purported promissory note in the sum of US\$2.2m, which was proved at trial to be a forgery.
- **Fortune Nest (FSD, Cresswell J)** Defending a just and equitable winding up petition culminating in a trial of allegations of dishonest breach of fiduciary duty, viz. the misappropriation of share capital of US\$9.2m by the sole director.
- **OAS Finance (BVI, Leon J)** Sole advocate for Deutsche Bank as Trustee of US\$ 400m of defaulted corporate bonds in seeking the winding-up of the company in the BVI. Raised issues as to the proper interaction of the BVI winding up with a restructuring commenced by the OAS Group in Brazil, and Chapter 15 recognition of those proceedings in the US.
- **Goldman Sachs:** Advising re insolvency claw-back risks in respect of derivative trading with a Cayman SPV counterparty.
- **Pokerstars:** Advising the world's largest online poker company on insolvency issues arising out of their US\$731m settlement of forfeiture proceedings issued by the US Department of Justice.

## Fund Disputes

- **Washington Special Opportunity Fund (FSD, Mangatal J):** Successful defence of an investment fund in a just and equitable winding up petition. Case selected by The Lawyer as one of the leading offshore cases in the first half of 2016.

- **Barclays Bank plc v Ritchie Structured Investments Limited (FSD):** Acting 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 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.
- **Weaving Clawback Advice:** Advising an investment bank on claw-back claims by the Cayman liquidator of Weaving Macro Fixed Income Fund.
- **Abraaj Credit Managers:** Advice on the duties owed by ACML as Manager of Abraaj Global Credit Fund, LP in the context of allegations of possible conflict between its duties as Manager and its alleged actions in working alongside Abraaj Investment Management Limited (as part of AIML's high profile Cayman liquidation, following the revelation that investor funds may have been misused by those in control of the Middle Eastern private equity group). Further advice in relation to the scope and effect of AIML's indemnities for costs and expenses, under certain limited partnership deeds.
- **Liongate SPC v. Dillard and Liongate Capital Management (FSD, McMillan J):** Advising and lead advocate for a fund manager in its successful defence of a two-day application for disclosure, within civil proceedings between the fund and its directors (each represented by leading London Queen's Counsel), without payment under the indemnity under the IMA with the Fund. Legal issues included an agent's obligation to deliver up documents, and the proper interpretation of indemnity clauses.
- **Sberbank:** Acting for and advising Sberbank in seeking to replace the general partner of an exempted limited partnership fund in which they were the major limited partner providing significant capital commitments. Case settled prior to proceedings.
- **Arch Cru Litigation (Royal Court of Guernsey)** – Defending a director in the US\$170m claim alleging breach of fiduciary duty, conflicts of interest, and breach of duty of care in monitoring alternative investments made by the UK based investment manager.
- **Jackson v. Dear (Royal Court of Guernsey; LB Talbot QC)** Acting for the Plaintiff in bringing the first minority shareholder derivative action before the Royal Court. The US\$50m claim was against the directors of a listed hedge fund, for breach of duty in respect of a decision to invest US\$100m in a start-up real estate fund manager. Parallel proceedings in London and New York.
- **Silverstein v Knief (Southern District of New York; 2011, Judge Rakoff):** Providing 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.
- **Carlyle v. Conway:** Advising 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 respect of a US\$1bn claim in the Royal Court of Guernsey against the directors, the parent companies and the investment manager.

- **Suntech v. Wade (US Court of Appeals for the 9<sup>th</sup> Circuit):** Drafted Expert Evidence of Cayman Law on directors' duties, and the proper interpretation of their indemnities, for a successful motion to dismiss in Californian litigation. Decision of the US District Court for the Northern District of California, San Francisco (based on the expert evidence of the proper construction of the directors' indemnity clause) subsequently upheld by the US Court of Appeals for the Ninth Circuit, on appeal.
- **HMRC v. BlueCrest** (First Tier Tribunal, Tax Chamber, London): Instructed as Cayman Law Expert for The Commissioners of Her Majesty's Revenue & Customs, in relation to the Cayman law of Exempted Limited Partnerships, in connection with high-profile English tax proceedings relating to entities in the BlueCrest group, one of Europe's largest fund managers by AUM.
- **Boeing v. RSC Energia** (US District Court, Southern District of California): Advising the defendant Russian state space agency on Cayman law issues arising from a US\$350m claim by Boeing for reimbursement of guarantee payments called by a consortium of banks in respect of lending to a joint venture between leading space technology and aeronautical engineering companies in the US, Russia, Ukraine and Norway.
- **Plymouth Rock v. Lister:** Drafted Expert Evidence of BVI Law on directors' duties for Gibraltarian litigation.
- **Perpetual Media Capital Limited v Enevoldsen and others, (Royal Court of Guernsey, 2012):** Acting for a Guernsey company SPV bringing a US\$10 million claim against the former directors of the company for breach of duty in making bridge finance investments prior to permanent financial close in respect of financing the films "Machete", "Ironclad" and "Game of Death", including related director disqualification claims. Case settled on confidential terms.
- See further above, Fortune Nest, Washington Special Opportunity Fund, Arch Cru Litigation, and Jackson v. Dear.

### Banking and Finance Disputes

- **Ritter v. Butterfield [2018] 1 CILR 529 (Civil Division, Williams J):** Advising and appearing as lead advocate for the Bank at a 9 day trial in its successful defence of claims in dishonest assistance and for breach of mandate brought by a director of a captive insurance company in respect of payment instructions forged by his co-director in order to misappropriate funds from the company. Partial award of indemnity costs in favour of the Bank (reported at [2018] 2 CILR 638). The first successful *Greenwood* estoppel case in Cayman law and a leading authority on the banker-client relationship and the proper approach to pleading claims of dishonesty.
- **Bernard L. Madoff Securities LLC:** Advising a major private bank in respect of claims by Mr Picard as Trustee of BLMIS re investments in the Fairfield Funds.
- **Chilean Investors v. ANZ:** Acted in a claim in the English Commercial Court for cUS\$30m brought by 30 Chilean investors against an investment bank, in respect of losses made on derivatives based on Russian National Debt.

- **Parabola v. Man Financial:** Instructed for Man in this high-profile £90m trial in the English Commercial Court involving allegations of fraud, breach of contract and breach of fiduciary duty.
- **PPI Litigation:** Instructed on behalf of Barclays' group companies in respect of strategically dealing with claims brought in the English Courts by many of the group's customers for alleged mis-selling of payment protection insurance.

### Professional Liability

- **Bear Stearns High Grade Structured Credit Fund:** Cayman Law advice to Duff & Phelps as JOLs of two defunct Bear Stearns Funds, in respect of New York proceedings claiming US\$500m in damages for legal malpractice against US law firm Reed Smith. Claim in connection with Reed Smith's representation of the Funds, in respect of earlier New York RMBS proceedings, against the credit ratings agencies Standard & Poors, Moody's, and Fitch Ratings, which had been dismissed on limitation grounds (claim for common law fraud by alleged knowing misrepresentation of the risks of the credit securities purchased by the Master Funds before the 2007 credit crunch, when providing ratings of those investments).
- **Finlan v. EMW (2007, English High Court, Ch D)** Defending a £25m negligence claim brought against a firm of English solicitors for an alleged failure to seek relevant information at the completion meeting of an MBO.

### Fraud and Asset Tracing

- **US\$189m Freezing Injunction Application (FSD, Richards J):** Advising on, and appearing as lead advocate in, a successful application for a freezing order over Cayman assets, with worldwide asset disclosure, in support of the enforcement of a US\$189m arbitral award in favour of a committee of creditors of two offshore funds for breaches of duty by the fund manager; successful dismissal of the respondent's urgent application to stay asset disclosure under the *ex parte* freezing order, pending their application to set aside. Together with co-ordinated parallel proceedings in Bermuda and Delaware, in which Appleby also acted as attorneys and experts respectively, led eventually to the well-known US credit fund manager filing for Chapter 11 in the US.
- **Pacer Construction v. Butterfield Bank and Butterfield Trust (FSD, McMillan J):** Advising on, and appearing as lead advocate in responding to, *Norwich Pharmacal* disclosure applications by a US\$75m arbitration award creditor for disclosure of bank and trust documents in aid of enforcement; advising on follow-on claims in the bankruptcy of award debtor for the set aside of settlement into trust.
- **NML v. Republic of Argentina (FSD, Chief Justice):** Acting for a high-profile hedge fund holding defaulted Argentinian bonds. Co-ordinating the Cayman process with the main substantive New York proceedings in which a US\$4.65bn settlement was eventually reached following the election of President Macri.
- **BBX v. RBC: (FSD, Jones J)** Successful application for a Florida bank's SPV for a freezing injunction against a trustee and a luxury yacht, in support of a US\$43m claim under the Cayman Islands'

Fraudulent Dispositions Law 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 of fraudulent dispositions. Co-ordinating equivalent freezing injunction and *Norwich Pharmacal* applications in Jersey. Case settled on favourable terms.

- **Mizuho Bank v. Schahin (BVI Comm Court, Leon J)** Successful application for an injunction to restrain the shareholders of a BVI company from wrongfully reversing acts taken by the Bank to enforce its security on a US\$460m loan.
- **Adamovsky v. Malitsky (EC (BVI) CA)** Acting for the successful appellants in an appeal against an anti-enforcement injunction.
- **Gazprom:** 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.

### Trust Disputes and Applications

- **FFP (Cayman) Ltd as Court Appointed Trustee (FSD, Segal J and Mangatal J):** Advising and representing FFP in respect of dealing with the settlement of high-profile US Department of Justice forfeiture proceedings against trust assets said to be derived from an alleged misappropriation of US\$4.5bn from a Malaysian sovereign wealth fund, 1MDB, by (among others) the former President of Malaysia, Najib Razak, and Taek Jho Low. Applications to the Financial Services Division of the Grand Court for a *Public Trustee v. Cooper* Category 2 blessing of decisions to give effect to settlement with the DOJ and for related protective orders from possible third party claims. Involved co-ordination with proceedings and advisers in California, New York, and New Zealand.
- **Canham v. Cutty Sark (The Poulton Family Trust (FSD, Kawaley J)):** Advising and representing Cayman National Trust as Former Trustee in contentious proceedings following the settlor's exclusion of certain of the beneficiaries, and a *Saunders v. Vautier* direction to collapse the trust. Issues raised in the proceedings included allegations of breach of trust, gross negligence, incapacity, and undue influence.
- **HSBC International Trustee v. Tan Poh Lee (The Tan Kim Choo Family Scholarship Trust (FSD, Kawaley J)):** Appointed as Guardian ad Litem to represent minor and unborn interests on two applications by HSBC as Trustee for *Beddoe* relief in respect of the proper role for the Trustee to take in respect of Singapore proceedings involving the Trust; and on a *Public Trustee v. Cooper* Category 3 surrender of discretion by the Trustee to the Court, in respect of whether to distribute Trust funds in the manner being sought in the Singapore proceedings.
- **HSBC International Trustee v. Kuang Shunyou (The Pan Family Trust (FSD, Chief Justice)):** Acting for HSBC on an application for Court blessing of the Trustee acting so as to give effect to a settlement of high value and contentious matrimonial proceedings in Hong Kong (involving allegations of misappropriation of US\$ 76m from companies held in the trust structure, to which independent directors had been appointed to conduct appropriate investigations).

## EDUCATION:

- University of Oxford (Pembroke College)

## SECTORS

Banking & Financial Services, Energy & Natural Resources, Funds & Investment Services, Private Equity

## EXPERTISE

Dispute Resolution, Fraud & Asset Tracing, Fund Disputes, Insolvency & Restructuring