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Tiernan Fitzgibbon



Called: 2018
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PROFILE

Tiernan's practice has a strong emphasis on insolvency and company law, arbitration, general commercial and property litigation.

Tiernan is regularly instructed in both County Court and High Court proceedings, whether that be in trial/multi day trial, or High Court and County Court injunctions.

Before joining the Bar, Tiernan was a Solicitor-Advocate (Civil) specialising in commercial litigation and arbitration. He trained at Allen & Overy LLP and on qualification joined Gibson Dunn & Crutcher LLP where he spent the next four years in practice.

Tiernan spent his first two years in practice in the Dubai office of Gibson Dunn where he gained considerable exposure to both DIFC and English Commercial Court litigation, international arbitration and also undertook a three month secondment in-house as General Counsel for a Saudi stock market listed firm.

On returning to Gibson Dunn's London office, his practice focused more on English law governed disputes such as the equal value pay claim brought by shop staff against *ASDA; Asda Stores Ltd v Brierley and other* [2019] EWCA Civ 44.

EXPERTISE

Commercial and Insolvency

Building on his prior experience as a commercial litigation solicitor, Tiernan has a thriving commercial practice encompassing claims related to:

- Sale of goods, and supply of goods and services;
- Breach of contract, and all matters involving interpretation of contracts;
- Assignment of debts, and any other chose in action; and
- Corporate and Personal Insolvency.

Recent instructions have included:

- Acted, as junior to Roger Laville, on behalf of the liquidators of a company in successfully obtaining a freezing injunction relying on evidence contained in “without prejudice” correspondence using the “unambiguous impropriety” exception recently expanded upon by the Court of Appeal in Motorola Solutions, Inc & Anor v Hytera Communications Corporation Ltd & Anor (Rev 1) [2021] EWCA Civ 11.
- Instructed to advise on and draft the pleadings involved in a case of repudiatory breach in circumstances where both frustration and force majeure were argued as defences arising out of the Covid-19 Pandemic resulting in a successful settlement in favour of the client.
- Successfully appealed a first instance decision on damages arising from a breach of contract resulting in the reduction of the sum awarded by a third.
- Instructed from the Junior Junior panel to advise the Institute of Apprenticeships on a potential contractual dispute.
- Advising on the validity of a potential Part 36 settlement offer and drafting the Particulars of Claim for breach of the settlement offer;
- Advising on, and drafting the Particulars of Claim for, breach of a repayment agreement entered into between parties to a construction contract;
- Defending a client from a small claim against it arising out of an alleged breach of contract and drafting the documents for permission to appeal the initial county court decision;
- Advising and assisting a client on their disclosure obligations including drafting the disclosure list;
- Junior to Simon Mills on a partnership dispute advising on how to remove a minority shareholder as director;
- Making and resisting applications to set aside default judgment;
- Resisting an application to set aside a statutory demand;
- Assisted Simon Mills on a claim for breach of an SPA including successful applications for a freezing injunction over 3rd party assets, specific disclosure and summary judgment;
- Assisted Simon Mills in advising on available defences to a claim under an indemnity forming part of a complex VCT structure;
- Appearing in both the County Court and the Chancery Division of the High Court (ICC) in a wide range of insolvency matters.
- Tiernan has been instructed by HMRC from the Junior Junior panel to assist on an appeal relating to an alleged MTIC fraud investigation.

Property litigation

Tiernan has extensive experience in property disputes and is regularly instructed by both private and public landlords to appear in the County Courts and the First-Tier Tribunal on cases including:

- Possession claims;
- Disrepair claims;

- Service charge disputes; and
- Housing related injunctions (both with and without notice).

Recent instructions have included:

- Instructed to resist an application to set aside an access injunction brought on grounds that the claim had not been validly served on a Defendant who had failed to update their address for correspondence.
- Instructed, as junior to Nicholas Grundy QC, to review a multimillion purchase of land with a view to potentially bringing a claim in respect of sales overage against real estate developers.
- Successfully representing a public authority in a Fast Track trial related to a possession claim involving consideration of both public law issues and defences under the ECHR;
- Appearing before the First Tier Tribunal for a landlord in a service charge matter relating to the recovery of sums falling due for major construction works;
- Successfully resisting an application to set aside a default judgment relating to service charges;
- Acting on a private prosecution brought against a social housing landlord under the Environmental Protection Act 1990.
- Assisted Ben Maltz in resisting an appeal to the High Court on grounds that the County Court Judge had failed to lend sufficient weight to the evidence a single joint expert;
- Assisted Ben Maltz in advising on the extent of a demised residential property for the purposes of determining the responsibility for and apportionment of service charges.

FURTHER INFO

Publications

- T. Sebastian, ‘Moral Damages in Investment Arbitration: Punitive Damages in Compensatory Clothing?’ 29 Arb. Int. 45 (2013) (with S. Jagusch and others).
- T. Fitzgibbon, ‘An Analysis of the Takeover Code’s Treatment of an Acquiring Company’s Shareholders: Stealing from the Rich to Give to the Already Wealthy?’ (2011) 2(2) King’s Student Law Review – https://www.kslr.org.uk/.
- T. Foden and T. Fitzgibbon, ‘The Dublin Dispute Resolution Centre Opens Its Doors’ (Young ICCA Blog, 6 November 2012) – https://www.youngicca-blog.com/.
- Contributor to Gibson Dunn’s Year End UK White Collar Crime Update 2015.
- Contributor to Gibson Dunn’s Year End FCPA Update 2014 and 2015.

Education

Postgraduate Degrees and Qualifications

- Queen Mary, University of London (2016-2017): Postgrad. Dip. in International Dispute Resolution (Arbitration) – 1H with a 1H thesis on the development and use of emergency arbitration titled “Emerging Problems with Emergency Arbitration: Mayday, Mayday”.

- BPP (2016): Higher Rights of Audience (Civil) – Pass (Pass/Fail classification).
- College of Law (2009-2010): Legal Practice Course – Commendation.
- King's College London (2008-2009): LLM in International Financial Law (including International Commercial Arbitration) – Merit (69.5%) with a 1H thesis titled 'An Analysis of the Takeover Code's Treatment of an Acquiring Company's Shareholders: Stealing from the Rich to Give to the Already Wealthy?'.

Undergraduate Degree:

- University College Cork (2005-2008): (BCL) (Hons) – 2:1. Class Rank: 6th.
- Bene Merenti Award – awarded for services to the University.
- Donegan Award for Mooting – awarded to the outstanding performance in the Annual Gala Moot as judged by sitting members of the Irish High Court.

Scholarships and Prizes

Mooting

- Ranked 14th Best Team out of 251 at the 17th Willem C. Vis International Commercial Arbitration Mooting Competition 2010 and participant in the Round of 32.
- Winner of the Katholieke Universitat, Leuven Vis Pre-Moot 2010.
- Winner of the UCC Annual Gala Moot 2008 as judged by Irish High Court justices.
- Co-Coach to the King's College London Willem C. Vis International Commercial Arbitration Moot team (2015-2016), assistant coach (2012-2013).

Debating

- Ranked 13th best team out of 338 and Octofinalist at the 2007 World University Debating Championships, Vancouver.
- Ranked 15th best team out of 153, 11th best speaker and Semi-finalist at the 2008 European University Debating Championships, Tallinn.
- Grand Finalist Judge at the 2009 World University Debating Championships, Cork.
- Winner of the Strathclyde Cup and finalist of many other competitions including the Inner Temple IV, Irish Mace, Trinity College Invitational and Cork IV.

Languages

French – 3A (Proficient) Common European Framework of References for Languages.

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