

CRAIG JONATHAN SWART

Professional

- 2009 Advocate of the Royal Court of Jersey
- 2004 English solicitor*
- 1996 Attorney and Notary – High Court of South Africa*

*Non-practising

Qualifications

- 1990 B.Juris University of Port Elizabeth, South Africa.
- 1993 Baccalaureus Legum (LLB) University of Port Elizabeth, South Africa.
- 2000 Higher Diploma, Insolvency Practice and Procedure, Rand Afrikaans University, South Africa.

Directory recommendations

Legal 500.

Chambers & Partners UK, Europe and Global.

Repeatedly listed as a prominent figure in the Citywealth Leaders List.

In addition, the Dickinson Gleeson (the firm) has been shortlisted for 3 years running in the STEP Private Client Awards Boutique Firm of the Year category.

Present firm

Partner at Dickinson Gleeson.

Areas of specialism

I advise on all areas of private client, trust, foundation, insolvency and company law, whether contentious or non-contentious. I am equally capable of turning my hand to non-contentious advisory and drafting work as I am to court advocacy. My broad general and litigation experience means that clients often come to me for more problematic issues, whether in sorting out questionable earlier drafting or mistakes in the past generally. Having practiced law in two jurisdictions I also have a somewhat more informed “life - skilled” view of matters I get to deal with generally.

I previously practiced as a private client and commercial lawyer in South Africa (for nine years) before moving to Jersey. Mine was a general practice that encompassed private client, trusts and commercial work; both non-contentious and contentious.

I moved to Jersey in January 2002 and joined the trusts and private capital team at Bedell Cristin; where I worked with Adv. Anthony Dessain, a seasoned insolvency, trust and private

client practitioner. I then had a short stint as a trust director at Stonehage, Jersey before joining the international trusts and private client team at Mourant Du Feu & Jeune (subsequently Mourant Ozannes). After seven years at Mourant I joined Dickinson Gleeson as a partner in January 2014.

Cases of note:

INSOLVENCY TRUST AND COMMERCIAL LITIGATION

***Barclays v Equity Trust* [2013] JRC094**

Represented Barclays with Adv. Justin Harvey Hills of Mourant Ozannes in the long running Balkans property funds litigation against Equity Trust, the former trustee which had administered a number of unit trust schemes aimed at property developments in Serbia, Montenegro and Croatia. The schemes failed spectacularly and around 900, mainly non-expert investors lost around €40 million. The claim against Equity was backed by specialist litigation funders, Harbour and raised new questions around ancient Jersey laws prohibiting champerty and maintenance (trafficking in litigation) and of the fiduciary duties and responsibilities of trustees and managers of unit trusts.

***In the Matter of the DDD Trusts* [2011] JRC243**

Assisted Adv. Jonathan Speck, for the trustee, in an application by the adult beneficiaries for the approval by the Court of a proposed variation of the terms of three very substantial trusts. The beneficiaries sought the revocation or unwinding of the early [irrevocable] exclusion of the now very elderly settlor. The court permitted the variation as being in the best interests of the unborn and unascertained beneficiaries on the grounds that the changed terms (reversing, in effect the irrevocable exclusion) would permit the trustee greater flexibility with tax planning which would be of all-round benefit to the beneficiaries of the Trust.

***In the Matter of the A Life Interest Trust* [2012]JRC229**

Assisted Adv. Jonathan Speck for the trustee in an application to set aside certain actions by the trustee on the grounds of mistake. In essence the trustee had made certain appointments and exercised powers of amendment and exclusion based around UK tax planning which relied upon the settlor being in rude health. It transpired that at the time of the planning the settlor was suffering from an undiagnosed very rare, and aggressive form of Alzheimer's which led to his premature death within three years; and which triggered significant IHT liabilities. The trustee said that had it known of the settlor's illness it would not have undertaken the risk of the planning, which depended upon the settlor living for seven years (he was in his mid-50s and seemingly very fit). Unfortunately the court found that as the settlor's wife and sons suspected something may be amiss with him but had not raised it with the advisors, it would not grant the orders. The judgment nevertheless provided useful guidance on principles of the law around 'mistake' in a trust context.

***In the Matter of Maltese Holdings and Zollinger Investments* [2012]333**

Acted as counsel for the liquidators of two Jersey companies in obtaining orders for the sale of commercial property in Germany (in the face of vociferous objection from a shareholder) and further orders for disclosure by the companies' administrators to

assist in determining the source of funds for the purchase of that property where an individual involved, one Breifne O'Brien, had committed fraud and his victims were trying to track the proceeds, which on the face of it had found their way to the two Jersey companies.

Consolidated Resources Armenia v Global Gold and Others [2014]JRC132

Represented two of the defendants in long running company unfair prejudice and injunction proceedings brought by Consolidated Resources Armenia against the firm's clients, in breach of an express arbitration agreement. The court of appeal ordered a stay (initially refused by the court of 1st instance) of the claims and clarified Jersey's arbitration laws, in particular where there are allegations of fraud which may in certain circumstances nullify an arbitration agreement. The Jersey court later lifted the interim injunction and developed the law around interim relief pending determination of a dispute by arbitration. James Brightwell of New Square has assisted.

In the Matter of the Z Trusts

Counsel for creditor trustees of two "insolvent" trusts in successfully arguing against the imposition of regimes proposed by the incumbent trustees and a hostile creditor (a former trustee) for the winding up of the trusts in a manner akin to the insolvent winding up of companies. The Court provided very useful directions and set out new law in relation to the administration of trusts where there is a deficiency of assets to meet trustee liabilities. The Court in particular confirmed that the trustee held the trust funds on trust for the creditors with beneficiaries being marginalised; and that it would in only very specific circumstance's order the appointment of 3rd party receivers or insolvency practitioners to administer trust assets for creditors. Giles Richardson of Serle Court has assisted.

ENRC NV v Zamin Ferrous Limited [2015] JRC217

With Adv. James Gleeson represented the successful plaintiff, ENRC (along with Hogan Lovells International, and Steven Smith QC and Tim Akkouh of Erskine Chambers), which had obtained Summary Judgment in England against Zamin Ferrous Limited, a Jersey company, in the amount of \$65m. We obtained a freezing injunction in Jersey on behalf of ENRC with attendant disclosure orders. Zamin's disclosure revealed the existence of two suspiciously timed agreements which appeared to dissipate its main asset (a South American mining concession allegedly worth \$250m). Zamin refused to supply any detail about the agreements. We then successfully applied for disclosure of the agreements on behalf of ENRC ([2015] JRC 217), primarily on the ground that the lack of information about the agreements and suspicious timing gave rise to the fear that Zamin was dissipating its assets. The information was needed to police the injunction. This is the first reported case in which the Royal Court has followed the English courts in supporting freezing injunctions by making specific further disclosure orders in relation to the assets of subsidiary companies. The Court approved the use of more extensive disclosure orders generally.

Siena v Glengall Bridge Holdings Limited and Others [2015] JRC 260

The Plaintiff was a lender which had lent c. £45 million to the Defendant companies ("the Companies"). They were unable to repay instalments to the loan as they fell due

and the full amount was therefore repayable. The application was for a letter of request to be issued to the English Court, asking it to put the Companies into administration. James Gleeson, Craig Swart and Robert Christie acted for the shareholders of the Companies and argued that (a) they had standing to intervene, on the basis that the Companies' assets were worth c. £55 million and there was equity in the Companies so the shareholders had an interest in the proceedings; and (b) the proceedings should be adjourned to give the shareholders time to put together an alternative package which would realise the assets and settle the debts. We were successful on point (a), which made new law as no Jersey authority has previously recognised that the shareholders of companies have standing to appear in such an application (separately from the companies themselves) where there is a positive equity situation. However in relation to point (b) the Court refused to adjourn the proceedings on the facts.