

Rebecca Farrell

Year of Call: 2016

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Overview

Rebecca Farrell's practice encompasses commercial, insolvency, property and estates litigation. She has expertise in contentious insolvency work; commercial matters (including contractual disputes and litigation concerning guarantees) and company claims (such as shareholder and partnership disputes). She also has good experience seeking urgent interim relief and dealing with enforcement matters.

Rebecca has been identified as a 'rising star' in the 2024 Legal 500 rankings:

'Rebecca is extremely diligent. Her preparation for each matter is thorough and focussed, and she applies the same discipline and dedication to low-value, fast-track matters through to complex, high-value claims. She has the ability to get on top of difficult issues quickly.'

Legal 500 2024/Commercial Litigation/ South Eastern Circuit/ Rising Stars

'Rebecca consistently provides the necessary mix of technical excellence. Her advocacy is robust and thoughtful and has a reliable ability to persuade judges to the logic of her arguments.'

Legal 500 2024/Company and Insolvency/ South Eastern Circuit/ Rising Stars

Recommendations

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Rebecca has assisted [X client] on various occasions during the past 18 months. Rebecca is always professional, courteous and diligent in her analysis of cases. She is always responsive to emails or telephone calls and she is a delight to work with"

Instructing solicitor

"I am a Solicitor and have so been since 1974-and once appeared in many criminal and civil cases. Just to say that Rebecca (whom I had never known of or met) was first class in her dealings with the Court witnesses and conducting the case.

Hopefully she will go far"

Client

"I am writing to thank you for representing me yesterday. As you know following the mix up on my last court date I was quite anxious about yesterday's hearing. As soon as we met, you immediately put me at ease and it was clearly obvious that you had given a lot of time in familiarising yourself with my case. This proved to benefit us both. I was impressed by your professionalism and knowledge in the court room that led to a positive outcome. I have let [X firm] know how good you are and that they should be confident in you representing their clients in the future."

Client

"Counsel was nothing short of fantastic, Rebecca had a very good handle on the numbers and the file in general she was impressive and did her utmost"

Client

Academic qualifications

- Law (LLB), The University of Durham: First Class Honours
- BPTC, The University of Law: Very Competent

Scholarships

- Exhibition Award – Inner Temple
- Advocacy Scholarship – The University of Law
- Quarter-finalist at the National Rounds of the Phillip C. Jessup International Law Moot Court Competition 2014

Professional bodies

- Chancery Bar Association
- Property Bar Association (associate member)
- London Common Law & Commercial Bar Association
- International Women's Insolvency & Restructuring Confederation (IWIRC)
- R3

Expertise

Commercial

Rebecca Farrell has a busy practice advising on insolvency and company matters including partnership and shareholder disputes, financial services litigation and general commercial disputes.

Insolvency

Rebecca regularly advises and acts for insolvency practitioners; creditors and debtors on matters concerning personal and corporate insolvency law. She is often instructed to appear on bankruptcy petitions, winding-up petitions and other substantive applications in both the High Court and County Court. 'Other applications' include:

- urgent applications/injunctions to restrain presentation or advertisement of a winding up petition;
- applications concerning transactions at an undervalue;
- preference claims;
- misfeasance claims;
- applications to remove liquidators;
- applications to set aside statutory demands;
- applications for income payment orders; and
- applications for delivery up of documentation and summonses.

Rebecca has some experience of disputes which have a dimension outside of this jurisdiction and associated challenges to the court's jurisdiction.

Alongside other members of the Commercial Team during the Pandemic, Rebecca published news items and delivered a webinar on updates to insolvency law and practice in light of Covid-19. This included coverage of the Corporate Insolvency and Governance Act 2020.

Examples of recent work includes:

- **Jackson v Ayles [2021] EWHC 995 (Ch)** – Successfully supported a trustee's application for a declaration that the first legal charge over the bankrupt's matrimonial home was unenforceable in accordance with Section 26 of the Financial Services and Markets Act 2000 ("FSMA 2000"). The application was heard over the course of two days and Chief ICC Judge Briggs' decision provides useful analysis concerning Section 19 FSMA 2000 (was the loan advanced 'by way of business') and Section 28 FSMA 2000 (was it just and equitable to enforce the loan in the circumstances, having regard to whether the person who is carrying on the regulated activity reasonably believed that he was not contravening the general prohibition).
- Successfully resisted an application by a bankrupt seeking to set aside a Section 283A notice which would have placed a (previously undisclosed and valuable) property beyond the reach of creditors.
- Obtained declarations from the court that certain payments from a pension provider to the wife of a bankrupt were void dispositions.
- Secured an order for delivery up of documents and a summons against a director resident outside of the jurisdiction. The case raised interesting issues concerning the extra-territorial reach of the Insolvency Act post-Brexit.
- Obtained permission from the High Court to appeal a bankruptcy order on the basis that the Debtor's Centre of Main Interest ("COMI") was not within Europe. Also acted on other petitions where the court's jurisdiction has been challenged based on COMI.
- Successfully obtained urgent injunctive relief to restrain presentation of various winding-up petitions in the High Court.

- Assisted leading counsel in relation to an application to stay a liquidation and compel the removal of liquidators.

Company Work

Rebecca acts and advises on matters which arise in the lifecycle of a business including:

- internal disputes between stakeholders of a business such as shareholder and partnership disputes including unfair prejudice proceedings and derivative claims;
- misconduct by employees; directors and shareholders for example breach of director and fiduciary duty matters; issues associated with fraudulent conduct and breach of restrictive covenant claims; and
- issues associated with companies in financial distress and director disqualification claims.

Examples of recent work includes:

- Successfully obtained an urgent injunction to prevent members of an LLP from closing a hotel arguably in breach of an LLP agreement and fiduciary duties owed.
- Successfully defended a breach of contract and misrepresentation claim at trial arising from and in connection with an allotment of shares purchased in a Single Enterprise Investment Scheme ("SEIS") qualifying company.
- Drafted the Points of Defence in unfair prejudice proceedings issued in the High Court. The unfair prejudice proceedings were subsequently consolidated with intellectual property claims and the petition ultimately failed (see *Minim v Rahman and others* [2022] EWHC 2870 (Ch)).
- Assisted senior counsel in a seven-figure partnership dispute.
- Provided urgent advice on the merits of seeking a freezing order and other potential relief against a former director and employee accused of wrongdoing.
- Provided advice to an executor in a High Court claim which was wrongly commenced against a deceased director accused of defrauding a company of significant sums and successfully enabled the client to favourably exit the litigation.
- Advised a director on the enforceability of restrictive covenants within the context of a shareholder agreement and exploration of new business opportunities.
- Provided advice on a number of director disqualification matters.

Commercial litigation and contractual disputes

Prior to qualifying as a Barrister, Rebecca worked as a paralegal in an international law firm on a reinsurance matter. Subsequently Rebecca worked as a Legal Editor at FromCounsel, a publishing company that provides an excellent online resource for corporate lawyers.

Rebecca has acted for a range of clients including national and international companies; lenders; education organisations; a European Institution; law firms; and individuals on a range of commercial issues including:

- the various forms of misrepresentation;
- construction and enforceability of guarantee and indemnity provisions;
- breach of contract claims including breach of warranty issues;
- agency;
- breach of trust issues;
- the Sale of Goods Act 1979 and associated legislation including acceptance/rejection issues;
- consumer regulations; and
- see also 'company law' section above for further examples of work undertaken which may also fall into that category.

Recent matters include:

- Succeeded in a three-day trial concerning a disputed commercial agreement and purported breaches of obligations owed.
- Succeed in a summary judgment application concerning the enforcement of a property development loan worth £1.2 million, tackling issues concerned with an alleged unfair relationship and other consumer rights legislation on a summary basis.
- Settled the defence of a claim for outstanding fees associated with an offshore marine project which resulted in the discontinuance of the claim shortly thereafter.
- Acted in a high value dispute arising from the pandemic concerning masks and compliance with European legislation and domestic PPE Regulations.

Financial Services

Rebecca has experience of disputes concerning the regulation of financial services and the conduct of investors. She has previously been instructed to settle grounds of appeal to the Court of Appeal in a dispute concerning consumer credit regulation and a procedural issue connected with the dispute.

Examples of recent work includes:

Jackson v Ayles [2021] EWHC 995 (Ch)

Successfully supported a trustee's application for a declaration that the first legal charge over the bankrupt's matrimonial home was unenforceable in accordance with Section 26 of the Financial Services and Markets Act 2000 ("FSMA 2000"). The application was heard over the course of two days and Chief ICC Judge Briggs' decision provides useful analysis concerning Section 19 FSMA 2000 (was the loan advanced 'by way of business') and Section 28 FSMA 2000 (was it just and equitable to enforce the loan in the circumstances, having regard to whether the person who is carrying on the regulated activity reasonably believed that he was not contravening the general prohibition).

Property and Estates

Rebecca is a member of 3PB's Property and Estates team and her practice covers disputes including ToLATA matters including disputes over farms and estates; contentious probate cases; real property litigation and landlord and tenant claims (both residential and commercial).

Property

Rebecca acts and advises on trust of land and proprietary estoppel claims, including those which involve Estates.

Rebecca's experience of real property litigation includes cases concerning trespass, nuisance, harassment; breach of covenants (including restrictive covenants); adverse possession; proprietary estoppel; rights of way claims and boundary disputes, as well as the associated claims for injunctive and declaratory relief.

Rebecca likewise advises and acts on numerous claims involving both residential and commercial issues. She has specific expertise in possession matters from their infancy to conclusion at trial, including against persons unknown, and associated rental arrears.

Rebecca also has experience appearing in the First Tier Tribunal (Property) Chamber on applications to the Tribunal including those for determinations regarding service charges; administration charges; rent repayment orders and the appointment of managers.

Recent work includes

- Successfully obtained possession and defended a tenant's associated counterclaim for harassment against the landlord. The trial was heard over 5 days in total (including judgment).
- Successfully struck out an application in the FTT for a rent repayment order based on an alleged unlawful eviction; harassment and control or management of an unlicensed home by a landlord where the Applicant/tenant failed to participate in the hearing.
- Successfully persuaded the Tribunal on the papers not to set aside its original decision in the aforementioned matter on appeal.
- Acted in case management hearings concerning ongoing lease renewal proceedings under 1954 Act.

Probate and Estates

Rebecca has advised and acted on a number of contentious probate disputes for example Inheritance Act claims (including adult children claims); disputes over testamentary capacity and undue influence and applications to remove personal representatives. In the non-contentious sphere, Rebecca has assisted in the review of the administration of an Estate in order to provide advice regarding the conduct of the administration and next steps.

She has also dealt the interface between this practice area and others, such as proprietary estoppel and constructive trust claims in the context of Estates and the administration Estates involving insolvent beneficiaries. She has advised an executor tasked with managing a fraud claim associated with a deceased company director and employee.

Articles

To order or not to order compulsory ADR: there is no question

Specialist commercial law barristers David Parratt QC and Rebecca Farrell review the Civil Justice Council's Report, 'Compulsory ADR'.

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No duty to exercise option reasonably or in good faith in engine maintenance agreement

Rebecca Farrell analyses Cathay Pacific Airways Ltd v Lufthansa Technik AG, in which the High Court found that there was no duty of good faith or duty to act reasonably in respect of an option to withdraw engines from a maintenance agreement.

This article was first published by Lexis®PSL on 21 July 2020.

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Following the introduction of the Corporate Governance and Insolvency Act 2020 ("the CIGA 2020") and the associated Insolvency Practice Direction, 3PB's specialist commercial law barristers Charles Irvine and Rebecca Farrell consider winding up petitions in this context.

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3PB's specialist commercial law barristers David Parratt QC and Rebecca Farrell review the cost consequences for lawyers and their clients of a refusal to engage in ADR.

The article includes a recent case law review which demonstrates a particular trend whereby Courts will examine closely the actions of the parties in relation to offers of ADR as to whether they are 'reasonable' or not. Even the failure to respond to a Part 36 Offer alongside an offer to mediate, can of itself potentially signify an unreasonable refusal to engage with ADR.

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Following the recent decision of *Re Debenhams Retail Ltd (In Administration)* [2020] EWHC 921 (Ch) which applied *Re Carluccio's Limited* [2020] EWHC 886 (Ch), 3PB's specialist Employment and Commercial Barristers Daniel Brown and Rebecca Farrell join forces to review the Carluccio's decision.

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Commercial update: Substituted service of bankruptcy petitions

The High Court has ruled that permission to serve a bankruptcy petition by a substituted means cannot be given retrospectively. Rebecca Farrell analyses the decision *Ardawa v. Uppal and Jordan* [2019] EWHC 456 (Ch) and considers how it changes the law.

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Articles

3PB's specialist Property and Estates Barristers Charles Irvine and Rebecca Farrell have issued an updated guide on the rights of commercial landlords and their tenants during the Coronavirus pandemic.

The guide reviews the existing position for commercial landlords and their tenants as well as an update on the latest Government's announcement on 23rd April 2020.

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3PB's Charles Irvine and Rebecca Farrell discuss Changing the locks during lockdown: The Coronavirus Act 2020, Commercial Property and Forfeiture

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