

Year called 1994

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Damian Falkowski practises in general commercial, banking and property matters. Recently he acted for a US hedge fund in a \$100 million tracing claim obtaining freezing injunctions and Norwich Pharmacal orders. He was also instructed in a US \$500 million international fraud tracing claim. His commercial practice includes joint ventures, charges and guarantees, consumer credit, secured and unsecured lending and share sale agreements. Damian is the General Editor of Halsbury's Laws Consumer Credit, and is a contributor to Phipson on Evidence: Estoppels and Editor of Aktins Court Forms: Mortgages.

He undertakes litigation and advisory work in all aspects of the law of real property. He frequently advises on these issues as they arise in the context of construction and development disputes, planning law and local authority law.

His practice includes arbitration, adjudication and expert determination. General chancery and trusts including wills and Inheritance (Provision for Family and Dependents) Act 1975 proceedings.

He has been admitted to practise as a barrister of the Eastern Caribbean Supreme Court in the Territory of the British Virgin Islands.

He is licensed for Direct Public access.

RECENT CASES

- Part heard in QB proceedings acting for Claimants against developer of a newly built house sold with fraudulently obtained guarantee.
- Advising foreign investor entering UK short term finance market.
- Recently advised property developer and drafted proceedings in a claim against a bank under a £30 million facility letter.
- Recently advised developer of 800 + dwellings and associated infrastructure on issues relating to section 106 obligations.
- Recently advised public authority on state aid issues arising in the proposed disposal of a building.
- Recently advised substantial landlord on the effect on the Competition Act 2008 on covenants in leases restricting user.

- Recently advised developer of retail park on the effect of exclusivity agreement in the light of the Competition Act 2008.
- Acted for claimant in building arbitration against contractor employed to design, manufacture, supply and erect new-build luxury home. NHBC were unwilling to issue 10 year warranty because of numerous defects and the house had to be demolished. The main question was whether the problem lay in the design, manufacture, supply and erection or whether the concrete slab, provided by the claimant, was the cause of the problem.
- Acted for a local authority in JCT adjudication concerning refurbishment of block of flats.
- Regularly instructed by global provider of merchant payment services for credit, debit, prepaid services etc.
- Advised in the context of a share purchase agreement as to whether solar panels on roof space leased by homeowners constitute part of the realty or remain chattels for the purpose of capital allowances.
- English v English & ors [2010] EWHC 2058 – acted for defendant mortgage lender in claim by borrower alleging mortgage was obtained by forgery, negligence against solicitors and unjust enrichment of mortgage lender when the security was redeemed.
- Oddbins – Ex Cellar Investments Ltd & Anr v. Nicolas UK Ltd. 2010 – acting for the Claimant in a breach of warranty action on the sale of Oddbins by its previous owner.
- Acting for the Claimant in Chancery Division proceedings to recover monies obtained by fraud purportedly for oil and gas investment schemes. Action also brought against Proceeds of Crime Act receiver.
- Systemcare (UK) Ltd v Services Design Technology Ltd & Anor [2011] EWCA Civ 546 – appeal to Court of Appeal on the making of a costs order against a director of an insolvent company.
- Drake & Ors v. Fripp [2011] EWCA Civ 1279 – Registered land / rectification
- Wolsey Securities Ltd v Abbeygate Securities [2007] EWCA Civ 423 – acting for provider of mezzanine finance in a joint venture development with issues of guarantees and security arising.
- William Alfred Allen v Charles Matthews [2006] EWCA Civ 1499; [2007] EWCA Civ 216 – acting for the successful defendant in long running proceedings relating to adverse possession, acknowledgement of title, insolvency and costs.
- Earle v Charalambous [2006] EWCA Civ 1090 – acting for respondent tenant in the Court of Appeal. CA upheld first instance decision in favour of the tenant to the effect that a notional rental value was appropriate rather than a “tariff” based approach to damages.
- Harlow District Council v Hall (CA) [2006] EWCA Civ 156 – acted for local authority. CA holding that section 285(3) of the Insolvency Act 1985 did not preclude the making of possession order made on terms as to arrears of rent.
- Paragon Finance PLC v Nash & Another [2001] EWCA Civ 1466 – acting for the borrower. This decision disapproves earlier dicta of the Court of Appeal to the effect that a lender in a variable rate mortgage has an unfettered discretion as to the setting of the interest rate. Court of Appeal accepted the submission that there was an implied term that a lender must exercise the discretion in a way that is not Wednesbury unreasonable, capricious or arbitrary.

RECOMMENDATIONS

Damian is recommended for Consumer Law and Real Estate Litigation in Chambers & Partners

Comments for Consumer Law include:

"He is very user-friendly and happy to get stuck into things. He is also very approachable and particularly good with clients." (2016)

"He is top-notch, as he's practical, quick and understands the issues." "He is good and highly responsive." (2014)

"Streetwise and very commercial" (2009)

"he analyses facts thoroughly and in a refreshing way, whilst also cross-examining with admirable tenacity" (2010)

"meticulous and detailed advice" and "a really great person to work with" (2011)

"offers both legal acumen and great commercial awareness" (2013)

Comments for Real Estate Litigation include:

"Ten out of ten, he's top-notch. He is practical and quick, and understands the issue and my industry." "He gets stuck in and has a high attention to detail. We use him on difficult matters."

"pragmatic approach and ability to come to proper and well-reasoned conclusions" (2010)

"displays an acute commercial awareness together with legal acumen" (2013)

Recommended junior in Banking & Finance in Legal 500, 2012

MEMBERSHIPS

- Commercial Bar Association
- Chancery Bar Association
- Gray's Inn Advocacy Trainer
- Gray's Inn Advocacy & CPD Committee
- British Polish Legal Association

QUALIFICATIONS

B.Mus : First Class (equivalent) The Juilliard School, New York (1980 – 1984)

M. Mus. The Juilliard School, New York (1980 – 1984)

A.R.C.M. (Hons.) Distinction, 1980

ADDITIONAL INFORMATION

Damian's first career was as a professional violinist, playing with orchestras including the Academy of St. Martin in the Fields and the London Symphony Orchestra.

He is also an External Examiner for the Bar Professional Training Course at City University.

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