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## Robert Machell

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**Year of Call:** 2016

**Barrister**

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**T:** 020 7405 9471

**Clerk:** Raj Lamba

**Clerk:** Jonathan Mytton

### PRACTICE AREAS

Commercial

Insolvency & Restructuring

Banking and Finance

Property

### PROFILE

Robert was called to the Bar following a successful career in banking and finance, and now specialises in complex commercial disputes and insolvency, often involving civil fraud and asset recovery.

Robert advises and represents businesses regarding a wide range of disputes, dealing with the interpretation of contracts and their validity; as well as the consequences of, and remedies for, breach of contract and/or termination. He has particular expertise in obtaining remedies for bribery including

recession of agreements and restitution, claims for deceit, and claims where the valuation of companies is in issue. He often advises or appears in court on contentious insolvency matters, both corporate insolvency and bankruptcy.

He has represented clients in the Court of Appeal, High Court, and County Court, handling a range of hearings and trials, including acting as sole counsel in a notable ten-day fraud trial in the High Court.

### Recent work includes:

- *Sucden Financial Limited v TMT Metals AG & Ors* [2024] EWHC 1051 (Comm): Appeared for the First Defendant in a summary judgment application in a claim for over \$6.6 million in a dispute arising from a metals trading facility.
- *Richardson v Yousuf*: Sole Counsel for the defendant in a shareholder dispute with a multi-million pound claim for deceit and breach of fiduciary duty in a 10 day High Court trial
- *Tripipatkul & Anor v Bendavid & Ors*: Representing the Claimants a multi-million pound bribery claim involving alleged breach of fiduciary duty (led by Jonathan Miller)
- Obtained multiple third party disclosure orders against banks and other financial institutions in the High Court to assist asset tracing for the victim of a sophisticated fraud

With over 20 years of commercial experience, Robert is exceptionally positioned to advise and represent commercial litigants across a broad spectrum of disputes. Prior to his legal career, he served for six years in the British Army, rising to the rank of Captain in the Royal Engineers.

## PRACTICE AREAS

### Commercial

Robert provides expert advice and representation in a wide range of business disputes, drawing on his commercial experience before being called to the bar. Robert's practice in this area includes high-value disputes involving allegations of fraud, deceit and bribery. Robert advises on the interpretation of contracts and their validity, breach of contract and/or termination. He has particular expertise in recession of agreements and restitution, and claims where the valuation of companies is in issue.

Robert's cases often involve a cross-border element, exclusive jurisdiction agreements and challenges to the Court's jurisdiction.

He accepts instructions as sole counsel, or being led as part of a larger counsel team.

Clients value Robert's commercial approach, practical advice and tenacious advocacy.

### Recent cases include:

- Appeared for the First Defendant in [\*Sucden Financial Limited v TMT Metals AG & Ors\* \[2024\] EWHC 1051 \(Comm\)](#), in a summary judgment application in a claim for over \$6.6 million in a dispute arising from a metals trading facility.
- Sole counsel for the Defendant in [\*Richardson v Yousuf\*](#), a multi-million pound claim for deceit and breach of fiduciary duty in a 10 day High Court trial (Business List (ChD) 2023).
- Obtained multiple third party disclosure orders against banks and other financial institutions in the High Court to assist asset tracing for the victim of a sophisticated fraud (King's Bench Division 2023).
- Acted (led by Jonathan Miller) for the Claimants in [\*Tripipatkul & Anor v Bendavid & Ors\*](#), a multi-million

pound bribery claim (Business List (ChD) 2022-2023).

- Acted (sole counsel) for an investor in a tax scheme in his successful application for pre-action disclosure of payments said to be bribes (Business List (ChD) 2021).
- Successfully obtained an order in the High Court enforcing a cross undertaking in damages in a commercial injunction.
- Advised the potential claimant on the effect of an undisclosed commission received by his bank in connection with a £10 million investment.
- Advised the borrower on rescission of a \$5m facility agreement for fraud.
- Obtained an urgent interim injunction in the High Court for a TV studio for the return of television recording cameras seized by a shareholder/creditor.
- Obtained an urgent interim injunction for a commercial laundry whose machines had been rendered inoperable by the lessor's agents in a dispute over lease payments.
- Advised the victim of a crypto-currency mining hacker, in a dispute over liability to pay software licence fees for the hacker's usage.
- Advised those acting for a FTSE 250 company in a dispute over contractual entitlement to fees.
- Advised and acted for a specialist M&E subcontractor following early termination of a multi-million pound construction project.
- Acted for a company in a multi-track claim against a former senior employee for misuse of company funds.

## Insolvency & Restructuring

Robert acts for and advises office holders, creditors and debtors in personal and corporate insolvency. This includes in relation to applications to set aside statutory demands, applications to restrain presentation or advertisement of winding up petitions, as well as the hearing of petitions. When needed, Robert takes a robust approach on behalf of creditors or debtors, combined with careful analysis of the facts and excellent knowledge of the law.

### Recent cases include:

- Successfully restrained the presentation of a winding-up Petition, following a hearing over two days in the Insolvency and Companies List, acting as sole counsel against a respondent represented by both leading and junior counsel.
- Advised an administrator on whether an application under the Insolvency Act 1986, Sch.B1, para.79 was necessary.
- Acted for the petitioning creditor in two related bankruptcy petitions involving assets out of the jurisdiction.
- Represented the Respondents in a high-value cross-border insolvency matter, opposing an application by a trustee-in-bankruptcy for a Proprietary Injunction and Receivership Order in the High Court.
- Advised a solicitor on a trustee-in-bankruptcy's s.311 request for papers of a former client, which were the subject of joint privilege with a third-party.
- Successfully obtained an administration order, and later advised and successfully obtained discharge of the administrator.
- Successfully opposed a company's application for a validation order.
- Successfully obtained a third-party costs order against a director following the just and equitable winding-up of a company.

## Banking and Finance

Robert acts for both lenders and borrowers, as well as other financial institutions. His career in finance means that he is particularly well-placed to advise asset managers and traders.

### Recent cases include:

- Appeared for the First Defendant in [Sudcen Financial Limited v TMT Metals AG & Ors \[2024\] EWHC 1051 \(Comm\)](#), a summary judgment application in a claim for over \$6.6 million in a dispute arising from a metals trading facility.
- Acted for a crypto-currency exchange in an application against a pyramid scheme fraudster in the High Court.
- Drafted the claim in a Letters of Credit dispute between two commercial banks.
- Advised the potential claimant on the effect of an undisclosed commission received by his bank in connection with a £10 million investment.
- Advised the borrower on rescission of a \$5m facility agreement for fraud.
- Advised the potential claimant on the merits of the claim in respect of losses incurred on a regulated pension product.
- Represented the Defendant bank against a mis-selling claim where the terms of a prior settlement were challenged.

## Property

Property assets play a key role in many of Robert's insolvency and commercial matters. Having acted in many commercial and residential property disputes, he has a good working knowledge of property law.

Robert often assists clients in insolvency matters and commercial disputes, where there is a landlord and tenant, or real property issue.

### Recent cases include:

- Acting for a commercial party claiming injunctive relief and damages for interference with an easement for the passage of electricity.
- Advised in relation to forfeiture of a number of leases for care home properties, where the tenant proposed a restructuring plan pursuant to Part 26A of the Companies Act 2006.
- Advised on and successfully represented a commercial litigant in a Part 69 application for a court-appointed receiver by way of equitable execution of an order for sale of a commercial property.

## SIGNIFICANT CASES

**Sudcen Financial Limited v TMT Metals AG & Ors [2024]**  
EWHC 1051 (Comm)

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Appeared for the First Defendant, in a summary judgment application in a claim for over \$6.6 million in a dispute arising from a metals trading facility. Mr Justice Picken considered the circumstances in which the prevention principle applied, in the context of the First Defendant's argument that it had been prevented from paying the sums due by being forced to close its open nickel positions, as well the scope of the broker's contractual discretion to make a margin call.

#### **Shipley and anor v Spitfire Capital Ltd [2023]**

EWHC 1816 (KB)

Appeared for the successful applicant, Senior Master Fontaine set aside an order for pre-action disclosure, after considering how to apply the jurisdictional requirements in CPR r.31.16 where the prospective claimants had not yet particularised their claim. The court held that the jurisdictional requirements of the rule were not met, and if that was wrong it would not be appropriate to exercise the court's discretion in favour of the prospective claimants.

#### **Chelfat v Hutchison 3G UK Ltd [2022]**

EWCA Civ 455

Sole counsel for the Respondent, in an appeal concerning the expiry of limitation where a claim form is to be served out of the jurisdiction without permission. The Court of Appeal held that breach of CPR r.6.34 does not prevent the claim form being issued.

#### **Kuznetsov v Amazon Services Europe SARL [2019]**

EWCA Civ 964

Sole counsel for the Appellant, in an appeal concerning the court's jurisdiction to set aside a judgment some 15 months after it was entered, where the Respondent had not attended the hearing. The Court of Appeal found that there was such jurisdiction, because the normal 14 day period within which to make such an application could be extended under r.3.1(2)(a).

## **CAREER AND ASSOCIATIONS**

Called to the Bar

Barstow Scholarship, City Law School

Bar Professional Training Course, City Law School (Outstanding, ranked 3rd on the course)

Denning Scholarship, Lincoln's Inn

Excellence award, University of Law

Graduate Diploma in Law, University of Law (Distinction)

Member of the Commercial Bar Association

2000 to 2016: CFA® (Chartered Financial Analyst) charter holder

1993 to 2014: JP Morgan, Governance for Owners LLP  
1987 to 1993: British Army



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