



[ragnello@erskinechambers.com](mailto:ragnello@erskinechambers.com)

## Raquel Agnello KC

**Call: 1983 Silk: 2009**

Raquel is a sought-after specialist in insolvency, company and commercial litigation.

She is also a highly-regarded expert in the area of pensions and insolvency, in particular the 'moral hazard' provisions. She has led on many high profile cases on behalf of the Pensions Regulator, including on *Nortel* and *Lehman* in the Supreme Court. On pensions and restructuring issues, she has acted for the pension trustees in *Re Cobham Limited*, the secured lenders in *Johnston Press* and for Bombardier Inc. She has advised extensively on company voluntary arrangements including Clarks Footwear, BHS/Arcadia, New Look, Travelodge and Park First. She was successful in acting for the company, Snoozebox Limited, in the recent case whereby the Court declared that fines arising in potential criminal proceedings relating to breaches of Health and Safety legislation were compromised in the CVA.

Raquel is frequently retained by security agents and is familiar with advising on the construction of complex financial instruments, as well as challenges to demands and insolvency procedures. She advises corporate groups in relation to proposed restructurings and pension issues, including risk assessment. She acts in all aspects of company litigation including unfair prejudice petitions as well as being retained in general commercial disputes.

She is a member of the Appeal Committee of the Insolvency Practitioners Association and she sits hearing appeals from disciplinary cases.

Since 2001, she has sat as a Deputy Insolvency and Companies Court Judge (formerly Registrars) hearing both corporate and insolvency matters, including trials.

Raquel is fluent in French and Portuguese.

### Restructuring & Insolvency

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- Winding up
- Administration
- Contentious insolvency
- Creditor schemes and restructuring plans

- CVAs / IVAs
- Personal insolvency
- Receivership
- Directors' disqualification
- Misfeasance

Raquel's insolvency practice spans corporate and personal insolvency. She sits part time as a Deputy Insolvency and Companies Court Judge where she hears trials as well as shorter cases.

## Recent cases include:

**Re Snoozebox Limited-** CVA proceedings relating to whether a possible fine in criminal proceedings had been compromised in a CVA.

**Re Park First and other companies** – advising and representing the administrators and companies in relation to complex interlocking series of CVAs concerning parking places in airports over which investors retained leases of parking places. Advising on the property rights created and how best to deal with them in the CVAs. Defeating a successful challenge to the CVAs

Advising the landlords in relation to a CVA challenge raising the issue as to whether obligations relating to cladding and related health and safety issues are property rights. Case settled on confidential terms

**Clarks footwear CVA** – challenges by substantial landlords on grounds of unfair prejudice. Challenge settled on confidential grounds

Acting for well-known security agents in relation to construction and interpretation of complex financial documents and advising on priorities, costs payments and rights of parties in circumstances where various stake holders threatened to sue.

**Instant Cash loans** – acting for the company at the convening hearing of the proposed scheme where ultimately the Judge held that an early surrender of a lease interfered with property rights.

Acting for the Liquidator in relation to a failed tax avoidance umbrella companies scheme where issues relating to whether the funds held by the company are subject to a trust in favour of the offshore beneficial owners of employer companies. Ongoing

## **Hathurani v Jassat**

High stakes bankruptcy litigation arising out of a joint venture dispute in which allegations of illegality were made.

## Pensions

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- Moral hazard
- Pensions and restructuring

Raquel is the leading Silk in the area of pensions and insolvency. She has led on many high profile cases on behalf of the Pensions Regulator (and won all of them), including on Nortel and Lehman in the Supreme Court.

She has acted for the trustees of the Kaupthing Singer and Friedlander pensions scheme in their successful proceedings against the company in administration relating to the provability of the section 75 claim.

Her wealth of experience in this area also makes her a favourite to advise clients facing investigations and/or action by the Pensions Regulator against them.

## Significant cases include:

## **Lehman Brothers v The Pensions Regulator (2014)**

£184 million settlement payment (the largest sum paid to a pensions scheme) represented a full-buy out of Lehman's member benefits.

## **Re Storm Funding (2013)**

Concerning the maximum quantum payable under a s.47 contribution notice.

## **Nortel & Lehman v The Pensions Regulator (2013) Supreme Court**

Liabilities under a financial support direction (FSD) issued against an insolvent company would rank as a provable debt.

**Re Johnston Press** – acting on behalf of the secured lenders in relation to a proposed restructuring and proposed RAA with the Pensions Regulator. Advised on risk of moral hazard action. Company went into a pre pack administration and no moral hazard action was identified by the Regulator in its section 89 notice.

**Re Cobham defence systems** – acted and advised the Trustees of the Cobham pension scheme about the risks to the pension scheme of the proposed buy out by Advent International and the scheme of arrangement. The matter settled on satisfactory improved terms for the pensions scheme.

**Re Bombardier** – acting on behalf of the Bombardier group in relation to threatened moral hazard proceedings relating to the sale of its Belfast based subsidiary.

## **Litigation & Arbitration**

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- Shareholder disputes
- Joint venture disputes
- Partnership / LLP disputes
- Fiduciary duties
- Civil fraud and asset recovery
- Cross-border disputes
- Interim remedies

Raquel's experience enables her to deal with all aspects of litigation including mediation and arbitration. She advises frequently on the relationship between arbitration and insolvency, including cross border issues. She frequently sits in the Companies' Court hearing shareholders disputes and other company litigation.

### **Recent cases include:**

Acting for a successful AI company in its proceedings against a US based large corporation legal issues relating to a joint venture, implied terms, collateral contracts and complex issues relating to the computation of loss – ongoing in the Commercial Court

Acting for security agents in proceedings issued by director/shareholder and parent companies against the secured lenders and the security agents. Issues to be determined include whether the secured lender can only seek to make a demand for repayment as well as seek the appointment of administrators where the lender has no ulterior motive.

Ongoing

### **Confidential Shareholder Dispute**

Advising high value individuals in relation to Jersey companies concerning beneficial interests in the shares of the company.

## **BESTrustees v Kaupthing Singer & Friedlander**

Established the assignability of s.75 debt thereby opening up the secondary debt market.

## **Corporate**

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- Shareholder disputes
- Corporate governance
- Interpretation of constitutional documents
- Joint venture disputes

In recent years, Raquel has been instructed on cases which remain confidential at present where investigative and advisory work is carried out arising out of the use of complex and multi-jurisdictional corporate structures and commercial transactions.

Often these have related to whether the sale or restructuring of a business or of a group of companies has been carried out in a way which seeks to take advantage of tax, pension or insolvency legislation (for example in providing for only trade creditors in the new business, leaving out unfavourable creditors such as pension and tax liabilities). Raquel is often retained because of her ability to understand the financing aspects and complex structure of the underlying transactions, as well as her in-depth knowledge of and experience in insolvency and pensions law. She is well versed in leading teams of counsel and professional advisers to achieve the desired result.

Raquel acted on behalf of the Bank in Dominion Corporate Trustees v. Capmark ( formerly GMAC Mortgage Bank ) relating to issues of priorities of charges in debenture documentation and relating to whether trustees of an offshore trust had a priority over a Bank's charge secured over the property of a SPV. Raquel successfully defended the Bank's priority both at first instance and in the Court of Appeal preventing difficulties arising for Banks in future lending situations with SPVs.

## **Memberships and publications**

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Chancery Bar Association

Insolvency Lawyers' Association

Financial Services Lawyers' Association

Bencher of the Inner Temple

International Women's Insolvency & Restructuring Confederation

## **Ranked in**

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**Chambers & Partners**– Insolvency & Restructuring, Pensions

**Legal 500**– Insolvency, Pensions