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David Matthias QC - Commercial and Property Litigation and Arbitration

David enjoys a high reputation as a civil litigator with particular emphasis on commercial, property and chancery work (including company, partnership, and contested probate), as well as construction and employment work. As a Fellow of the Chartered Institute of Arbitrators, he is a qualified arbitrator and has a considerable expertise in that form of dispute resolution. For example, he acted for six companies bringing claims in fraudulent misrepresentation against a leading property developer - **Muffin Break and Others v Henry Boot Developments [2010] EWHC 358 (Ch)**; for Datasharp UK Ltd, the largest distributor of office telephone systems in the UK, in a major commercial claim against the UK arm of the Nitsuko Corporation of Japan in the Mercantile Court in Bristol; and for a consortium of property developers bringing claims in breach of contract and proprietary estoppel against the government of the Turks and Caicos Islands, both before the Court of Appeal in the Turks and Caicos Islands and before the Privy Council in London - **Cyril Capron v Government of the Turks and Caicos Islands [2010] UKPC 2**. In **Stephen Barclay v Fairfax v Fairfax I.S. PLC [2010] EWHC (Ch)** David acted for the Claimant in his successful commercial agency action against a leading investment bank claim, and in **Wollenberg v Casinos Austria International GMBH [2011] EWHC 103 (Ch)** he acted for a major Austrian corporation in a case concerning domestic and international commercial agency agreements. **Renoir Consulting v Gould and Stuart** concerned the enforcement of restrictive covenants in employment contracts against two ex-employees living and working in Malaysia - an action in which David secured an order for a speedy trial from Mann J. on 7 February 2011, and which was subsequently settled satisfactorily on the day of the trial in June 2011. In **FCL (London) Ltd v Lisa Voice [2012] EWHC 3684** David was successful before Judge Richard Seymour QC in establishing that on the proper construction of an agreement for the provision of financial services to reduce the defendant's tax liability, a chartered accountant was not entitled to fees in respect of a reduction of £6m in the defendant's CTT liability for which he was not responsible. In February 2014 David succeeded in striking out a claim for abuse of process through making a collateral attack on an earlier decision, before Judge Seys Llewellyn QC in the Mercantile Court in Cardiff (**Emrys Rees v Pisani Plc**). In **Dudley Muslim Association v Dudley MBC [2014] EWHC 296 (Ch)** David acted for the Dudley Muslim Association in this high profile case concerning the Association's defence of a claim for possession of land (the site of a proposed new mosque) by the local authority, and in **Dudley**

Muslim Association v Dudley MBC [2014] EWCA Civ 911 David secured permission for a second appeal from Sir Stephen Sedley on the basis *inter alia* that the case raised a point of general public importance concerning whether evidence of detrimental reliance is a necessary component of an actionable claim in legitimate expectation.

In terms of arbitration, David has recently appeared for the claimant in a lengthy international arbitration concerning contracts for the supply of helicopters to a foreign state to service its oilfields, and for a local authority facing a multi million pound claim from a service provider in a commercial arbitration. He has considerable experience of securing interim injunctions (including Freezing and Search Orders) which can often prove decisive to the course and outcome of commercial and chancery disputes. For example, in **Hunter Kane Ltd v Watkins [2003] EWHC 186** (a significant case concerning breaches of fiduciary duty by a company director) he acted for the claimant company in obtaining urgent Search Orders against the defendant, a former director who had resigned with a view to diverting maturing business opportunities away from the Claimant, and had sought to delete all evidence of his preparations from his computers. He obtained those orders within 24 hours of first being instructed in a most complicated case, and the evidence secured paved the way for complete success in the action. His chancery practice includes:

Company disputes, such as **Franbar Holdings Ltd v Casualty Plus Ltd [2010] EWHC 1164 (Ch)** and **Franbar Holdings Ltd v Ketan Patel [2008] EWHC 1534 (Ch)** (the first derivative action brought under the Companies Act 2006). In **Franbar Holdings Ltd v Casualty Plus Ltd [2011] EWCA Civ 1364** David succeeded before the Court of Appeal in a dispute concerning the compulsory winding-up of a company, and in **Franbar Holdings Ltd v Casualty Plus Ltd [2011] EWHC 1161 (Ch)** before Proudman J. on issues including the expert determination of the value of minority shareholdings and options to purchase minority shareholdings - decisions which David succeeded in upholding before the Court of Appeal in **Franbar Holdings Ltd v Casualty Plus Ltd [2011] EWCA Civ 60**. David's expertise in both company law and licensing law came to the fore in **Beauchamp Pizza Company v Coventry City Council [2010] EWHC 926 (Ch)**, the first case to address the apparent tension between section 1028 of the Companies Act 2006 and section 27 of the Licensing Act 2003.

Agency disputes, such as **Stephen Barclay v Fairfax v Fairfax I.S. PLC [2010] EWHC (Ch)** in which David acted for the Claimant in his successful commercial agency action against a leading investment bank claim, and **Wollenberg v Casinos Austria International GMBH [2011] EWHC 103 (Ch)** in which he acted for a major Austrian corporation in a case concerning domestic and international commercial agency agreements. In **FCL (London) Ltd v Lisa Voice [2012] EWHC 3684** David was successful before Judge Richard Seymour QC in establishing that on the proper construction of an agreement for the provision of financial services to reduce the defendant's tax liability, a chartered accountant was not entitled to fees in respect of a reduction of £6m in the defendant's CTT liability for which he was not responsible.

Contested probate work, such as **Elsa Allen & Ors v Norman Emery & Anor [2005] EWHC 2389 (Ch)**.

Partnership and joint venture disputes such as **Alan Williams Entertainments Ltd v Hurd and Othrs [2006] EWCA Civ 1637** and **Sintra Homes Ltd v Sintra Developments Ltd [2007] EWHC 3071 (Ch)**. He has recently been involved in long running proceedings before the Bankruptcy Court, acting for a Kenyan company and its principal shareholders against an international business man who claimed to have entered into a joint venture agreement with the Kenyan company - **Nguruman Ltd and Steyn v Jan Bonde Neilsen**.

Intellectual property and breach of confidence claims, such as **C.L. v T.C. [2005]** (anonymity ordered by Hart J.).

Land law disputes such as **Eastleigh Borough Council v Town Quay Developments [2008] EWHC 1922 (Ch)** and **[2009] EWCA Civ 1391**. David's expertise in both company law and licensing law came to the fore in **Beauchamp Pizza Company v Coventry City Council [2010] EWHC 926 (Ch)**, the first case to address the apparent tension between section 1028 of the Companies Act 2006 and section 27 of the Licensing Act 2003. In **Dudley Muslim Association v Dudley MBC [2014] EWHC 296 (Ch)** David acted for the Dudley Muslim Association in this high profile case concerning the Association's defence of a claim for possession of land (the site of a proposed new mosque) by the local authority, and in **Dudley Muslim Association v Dudley MBC [2014] EWCA Civ 911** David secured permission for a second appeal from Sir Stephen Sedley on the basis *inter alia* that the case raised a point of general public importance concerning whether evidence of detrimental reliance is a necessary component of an actionable claim in legitimate expectation.

David also has a strong construction law practice, and is regularly involved in adjudications, arbitrations and litigation in this field. For example, he recently acted for the London Borough of Camden in a major building dispute - **London Borough of Camden v Makers UK Ltd [2009] EWHC 605 TCC** and **[2008] EWHC 1836 TCC**, having previously acted for that client in a series of high profile and complicated adjudications, and represented that client before the Technology and Construction Court in an important case concerning the enforceability of adjudicators' awards - **William Verry Limited v London Borough of Camden (2006) EWHC 761 (TCC)**. In **Turner Page Ltd v Torres Design (1998) TLR 499 (C.A.)** he acted for a development company successfully bringing a large claim in the Technology and Construction Court against a design consultancy responsible for shortcomings in the renovation and restoration of a large London theatre. Recently he was also acting for another London authority in a large action in the Technology and Construction Court concerning defective roofing on a major civic building which he successfully settled last year after a two day informal mediation, and for a Premiership football club in a dispute concerning the construction of a new stand at their ground. David's employment law practice includes advising and appearing for both employers and employees in the Employment Tribunal and the Courts. Recent major cases have included **Lesley Gill v Time Out Magazine Ltd**, a claim in wrongful dismissal brought successfully in the High Court on behalf of the managing director of the well known magazine (case ended on the fourth day of the trial in December 2006 when the Defendant capitulated and agreed to pay the entire value of the claim plus all the Claimant's costs), and **Andrew Duncan v Mac Trading Services Ltd**, a claim in unfair dismissal brought on behalf of the manager of a company trading on the financial futures market, which was settled satisfactorily in his favour at the hearing in the London Central Employment Tribunal. **Renoir Consulting v Gould and Stuart** concerned the enforcement of restrictive covenants in employment contracts against two ex-employees living and working in Malaysia - an action in which David secured an order for a speedy trial from Mann J. on 7

February 2011, and which was subsequently settled satisfactorily on the day of the trial in June 2011. David's employment law practice fits well with his civil litigation expertise, and involves him acting for organisations to protect their intellectual property and other confidential information from employees and ex-employees, which often involves obtaining urgent injunctive relief including Search Orders or Doorstep Orders. For example, in **C.L. v T.C.** (anonymity ordered by Hart J.) the claimant (a major company) was being blackmailed by the defendant, a former employee who had taken confidential information and threatened to publish it. On behalf of the claimant company he secured an extensive Search Order to secure the stolen information, and further orders preventing the defendant from publishing any information, and securing anonymity for the proceedings. In **Hunter Kane Ltd v Watkins [2003] EWHC 186** (a significant case concerning breaches of fiduciary duty by a company director) he acted for the claimant company in obtaining urgent Search Orders against the defendant, a former employee and director who had resigned with a view to diverting maturing business opportunities away from the Claimant, and had sought to delete all evidence of his preparations from his computers. He obtained those orders within 24 hours of first being instructed in a very complicated case, and the evidence secured paved the way for complete success in the action.
