

Susan Ower

Year of Call: 2009

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Professional Career to date

Devil Masters: Mark Lindsay, Kenny McBrearty, Matt Jackson.

2009: Year of call

January 2008 - September 2008: Senior Solicitor, Thorntons Law, Edinburgh

April 2006 - December 2007: Senior Solicitor, HBJ Gateley Wareing, Commercial Litigation Department

July 2005 - April 2006: Solicitor, Ledingham Chalmers, Commercial Litigation Department

August 2004 - July 2005: Solicitor, DLA Piper, Insurance Litigation Department

August 2002 - August 2004: Trainee Solicitor, DLA Piper. Experience in Insurance Litigation, Commercial Litigation, Real Estate, Construction and Engineering.

Education & Professional Qualifications

Diploma in Legal Practice, University of Dundee (2002)

LLB with First Class Honours, University of Dundee (2001)

Areas of Expertise

- Commercial Contracts
- Commercial Property
- Company, Corporate Finance and Tax
- Insolvency
- Professional Liability
- Public Law, Judicial Review and Human Rights

Professional Experience

Susan called to the Bar having practised for a number of years as a solicitor in Edinburgh, in the field of commercial litigation.

Since calling to the Bar she has been instructed in relation to a wide variety of commercial disputes, with a particular focus on those involving insolvency, commercial contracts, interdict, property law and construction contracts. Susan is also a standing junior to the Scottish Government.

In relation to insolvency matters, she has significant experience in acting on behalf of insolvency practitioners and company directors. She has acted on behalf of the joint administrators of The Rangers Football Club Plc. The case has to date involved litigation arising out of a claim against the Club's former solicitors in England; the rectification of a defective Administration appointment; a contractual dispute with Ticketus LLP; and the recovery of various documentation in connection with the Administration. She also acted on behalf of the Administrators of Heritable Bank Plc in connection with a significant dispute in the winding up of Landsbanki Islands HF, and on behalf of the administrators of The Globespan Group Plc (and associated companies).

She has also been instructed to act on behalf of a major Scottish bank in relation to various commercial matters, including the winding up of a company registered in the British Virgin Islands, the administration of a quango with a significant Scottish property portfolio, and a commercial court action for declarator in respect of a guarantee.

As a solicitor, she was involved in several high-profile commercial actions in the Court of Session, which included *Anglo-Dutch Petroleum International Inc v Ramco Energy Plc*, a multi-million pound action for decree conform at the instance of a Texan oil investor.

Recent Cases

Commercial

The Scottish Salmon Company Limited -v- Marine Harvest (Scotland) Limited

Acted for the defender in interdict proceedings arising out of salmon farming activities in Scotland. Damages alleged to amount to £6million.

BAM Properties Limited -v- IVG Glasgow Limited and IVG Immobilien AG

Acted on behalf of defender in a claim for payment of approximately £4.5million, arising out of a property finance agreement.

Premier Developments Limited -v- West Highland Sailing

Action for payment of £300,000 in respect of damages said to have been suffered following sinking of pontoon.

New Ingliston Limited -v- The City of Edinburgh Council

Action at instance of landowner for implement of obligations arising out of agreement for recovery of land, said to be suffering from contamination.

ArmaTrac Limited & Erkunt Traktör Sanayi A.S. -v- Robert Clarkson & Anr

Commercial court action for payment of sums arising out of franchise agreement.

Sport Span (HK) Limited -v- Athole Still

Acted for football agent in action for recovery of fee, arising out of contract of high profile international football manager.

Border Bingo Club Limited -v- McCallum Ceilings Limited

Acted for insurer in action for recovery of losses arising out of collapse of ceiling in bingo hall in Scottish borders.

MacDonald Hotels Limited -v- Travelers Insurance Company Limited

Acted for insured in respect of commercial court action against insurer for declarator and payment of £5million.

Pipeline Accounts Limited -v- Alan Forbes & Others

Acted for employer in action for interdict, delivery of confidential information, enforcement of restrictive covenant and payment of damages.

Oval Financial Services Limited -v- Martin Robertson

Acted for former employer in action for payment, interdict and recovery of confidential information.

Freddie Williams Bookmakers Limited -v- William Mackay

Acted for pursuer in respect of commercial court action seeking recovery of gambling debt.

Williams (2012) Limited -v- Merson Signs Limited

Acted on behalf of the defender in commercial court action for warranty and indemnity claims, arising out of a sale and purchase agreement.

Search Consultancy Limited -v- BE-IT Resourcing Limited & Others

Section 1 proceedings for preservation of evidence and related interdict proceedings, relating to alleged misuse of confidential information.

RMS Pump Tools Limited -v- Trevor Adams

Section 1 proceedings for preservation of evidence and related interdict proceedings, relating to alleged misuse of confidential information. Led to action for breach of order for the production and recovery of Documents and Property under section 1 of the Administration of Justice (Scotland) Act 1972

Imran Ahmad -v- The Rangers Football Club Limited

Acted on behalf of the defender in a claim for payment of a bonus under a director's contract of employment.

Wills v Strategic Procurement (UK) Limited [2013] CSOH 26

Acted on behalf of a defender in action seeking to set aside a sheriff's decree of absolvitor and preceding joint minute, on basis that they were based on an uninduced but known error where the pursuer's solicitor had mistakenly agreed to a form of settlement which would prevent pursuit of the claim in London, his counterpart being aware of said error and proceeding without comment. Explored law of error in Scotland.

Pirtek (UK) Limited -v- Lindsay Hydraulics and Others

Acted for defender in commercial court action in respect of warranties and indemnities in terms of agreement for sale and purchase of franchise.

Gerard Devaney (and Others) -v- Harvie Diamond and Richard Freeman

Partnership dispute in relation to partnership of Ross Harper, Solicitors.

Brandon Hire Plc -v- Steven Russell [2010] CSIH 76

An appeal against a decision of the Sheriff in relation to the construction of a document which set out the standard terms and conditions on which the parties contracted. The question was whether certain words in that document imposed personal liability on the defender. The Inner House refused the appeal, holding that the relevant clause did in fact operate to create a personal guarantee.

Insolvency and Company

Joint Administrators of Questway Limited -v- Stonegale Limited & Others [2016] UKSC 30

Decision of Supreme Court in respect of an application under Section 242 of the Insolvency Act 1986. Susan acted for the joint administrators of a company in successfully establishing that sums transferred to a director of the company in administration, by the company, constituted a gratuitous alienation.

Grampian MacLennan's Distribution Services Limited (in Liquidation) -v- Carnbroe Estates Limited

Acted for joint liquidators in action for reduction for disposition of commercial property worth approximately £900,000. Ran to proof in commercial court in front of Lord Woolman.

Note in Liquidation of Jakem Limited

Acted for liquidator in defence of application for alleged misfeasance.

Liquidations of PPF Shipping Limited and Phytoscience Limited

Acting for liquidators of two related companies in respect of (i) application for directions; and (ii) judicial review of decision of HMRC, at instance of creditor of companies in respect of monies allegedly wrongly paid to liquidator.

CS Properties (Sales) Limited (in Liquidation) -v- Soni

Commercial court action for alleged misfeasance at instance of liquidator, seeking payment of approximately £800,000 from former directors of company.

Impact Trading Limited (in administration) & others v Stotfield Limited

Acted for joint administrators of company in two related actions for interim interdict and recovery of property, following fraud at the instance of director of insolvent company.

Dunvagen Holdings Limited (in Administration) -v- Brian Kilgour, Unreported, 22 October 2015

Acted for administrators in action for breach of missives, including recovery of expenses of administration. Judgment in favour of administrators after proof.

Kenneth Pattullo -v- Sohan Singh and Bellhill Limited

Acted for company and director in defence of application in terms of Section 242 of Insolvency Act 1986.

Sequestration of Thomas Coakley

Acted for trustee in sequestration in sequestration arising out of debt in sum of approximately £24million. Conducted private examination of persons over a period in excess of 12 days.

Joint Administrators of MK Leslie Limited -v- Northburgh Limited

Acted for joint administrators in action for interim possession of plant and equipment belonging to company in administration, and for interim interdict.

Hyflodraulic Limited -v- Dynamic Equipment Company Limited

Acted for administrators of Company in resisting application for interim possession of BOP Handling Equipment, comprising equipment necessary for the operation of and oil and gas company.

Petition of Robert Forrest to wind up Doonin Plant Limited

Petition at instance of minority shareholder for just and equitable winding up of company. Acted on behalf of majority shareholder and director.

Petition of Paul Alexander Reid for an order under Section 994 of the Companies Act 2006 in relation to Perigon Solutions Limited

Acted on behalf of petitioner in application in terms of Section 994 in respect of company operating in oil and gas sector.

Polley v West Lothian Council [2015] CSIH 19

Acted for Accountant in Bankruptcy in action at instance of party litigant seeking to reduce award of sequestration.

Petition of Hooley Limited in respect of The Victoria Jute Company Limited, The Samnuggur Jute Factory Company Limited Titaghur plc

Acted for petitioner in respect of action for declarator in respect of sale of business and assets of companies, in India.

Joint Administrators of Station Properties Limited [2013] CSOH 120

Acted for a creditor in respect of an application by joint administrators for directions in relation to the exercise of their power under the Insolvency Act 1986, Schedule B1, Paragraph 80, to bring the administration to an end, where its purpose had been achieved.

Joint Administrators of Questway Limited -v- Simpson [2012] CSOH 107

Acted for joint administrators in an application under the Insolvency Act 1986 s.242 seeking an order against a director for the repayment of a sum alleged to be a gratuitous alienation. Application granted, after proof in commercial court.

Paul John Clark and David John Whitehouse, the Joint Administrators of The Rangers Football Club Plc (in Administration) [2012] SLT 599

An application by joint administrators in terms of paragraph 63 of Schedule B1 to the Insolvency Act 1986 for directions, as to whether they could be prevented from terminating contracts which the Club entered into with Tickets LLP and Ticketus 2 LLP, in terms of which the Club sold to Ticketus large numbers of season tickets for seats in the Ibrox stadium for each of the seasons from 2011-2012 to 2014-2015.

Former Joint Liquidators of Echelon Wealth Management Limited, Noters [2011] SCLR 678

The former joint liquidators of a company sought payment of the full amount of remuneration and outlays as recommended by the reporter and the auditor. The court held that they were not entitled to refuse to put the succeeding joint liquidators into possession of all the company's assets because of a desire to retain some part of those assets as security for their own claim for remuneration.

Petition of Gerard Anthony Friar and Blair Carnegie Nimmo, Joint Administrators of Martin Groundland Limited

[2011] CSOH 14

An application to fix the reasonable remuneration payable to administrators in respect of their outlays and remuneration.

Integrated Building Services Engineering Consultants Limited trading as Operon v Pihl UK Limited

[2010] CSOH 80

Dispute arising out of a building contract for the construction of two secondary and eight primary schools in Aberdeen. The pursuer sought to enforce three decisions of an adjudicator. The defender argued that the balancing of accounts in bankruptcy (otherwise "insolvency set-off") applied. The pursuer enrolled for summary decree. The court held that the defender was entitled to rely on the balancing of accounts in bankruptcy and refused the pursuer's motion for summary decree.

The Winding Up Board of Landsbanki Islands HF v Margaret Mills, Patrick Brazzill, Thomas Burton and Alan Bloom, the Joint Administrators of Heritable Bank Plc [2010] CSOH 100

The court considered the effect in the administration of Heritable Bank Plc of a decision made in the winding up (in Iceland) of Landsbanki Islands HF. Heritable is a wholly owned subsidiary of Landsbanki. Its claims in the Icelandic winding up having been rejected (applying the principles of insolvency set off), the joint administrators of Heritable made an application to the Scottish Courts appealing against that rejection of their claim. The court refused the application.

Petition of Cheshire West and Chester Borough Council in the Administration of Springfield Retail Limited [2010] CSOH 115

The Scottish courts considered for the first time the question of the payment of rent as an expense of an administration. The court held (following the decision of the English courts in the case of Goldacre (Offices) Limited v Nortel Networks UK Limited) that rent in respect of the period during which a third party occupied property in terms of the licence should be paid as an administration expense.

James Bernard Stephen and David John Hill, Joint Administrators of QMD Hotels Limited [2010] CSOH 168

Joint administrators applied for an order in terms of Section 176A(5) of the Insolvency Act 1986, disapplying Section 176A(2) of that Act, which requires them to make a "prescribed part" of the company's net property available to satisfy the claims of unsecured creditors. The costs of making a distribution would be disproportionate to the benefits. Held that the court should ask whether the incurring of the estimated costs is reasonably necessary. It may be that some "rough and ready adjudication" can be carried out, which would result in a dividend to unsecured creditors.

Banking and Finance

Clydesdale Bank -v- Montieith House Limited

Acted on behalf of Bank in petition for appointment of Administrators.

Bank of Scotland Plc -v- SF2046 Limited

Acted on behalf of Bank in petition for appointment of Administrators.

Catherine Cooper -v- The Bank of Scotland Plc

Acted on behalf of the Bank in a commercial court action seeking reduction of loan agreements.

Heineken UK Limited -v- RBS Plc

Instructed on behalf of RBS in a litigation challenging the validity of loan guarantees. Action concerned the scope of the Bank's right to renew or renegotiate loan terms pursuant to a standard term of their loan agreement, without notice to guarantors.

Directors' Disqualification

Her Majesty's Secretary of State for Business, Innovation and Skills -v- Giancarlo Celino and Fabio Celino or Munro, Unreported, Dumbarton, 6 November 2015

Acted for members of related LLPs in successfully resisting applications for disqualification. Action ran to proof of approximately 3 weeks' duration.

Property

Retro Properties Limited -v- Grove Property Unit Trustee 1 Limited & Others

Action for interdict in favour of tenant against neighbouring proprietor, preventing obstruction of or

interference with enjoyment of right of way.

AWG Wylie -v- The City of Edinburgh Council

Acted for landlord in commercial court action relating to dilapidations claim in terms of commercial lease.

TDC (Aberdeen) Limited -v- Orange Personal Communications Limited & Others

Commercial court action in relation to recovery of land used by telecommunications operators for the provision of network services. Concerned rights under Electronic Communications Code 1984

Little Cumbrae Estates Limited -v- Rolyat 1 Limited

Action at instance of landlord arising out of tenants' failure to obtain landlord's consent to significant alterations to commercial property

Professional Negligence

Warren James (Jewellers) Limited -v- [Name withheld]

Acted for firm of solicitors in defence of a claim for a loss of opportunity, being the loss of the opportunity to present a claim for damages against a landlord in respect of the breach of an exclusivity clause in a lease of retail premises.

Sinclair Knight Merz -v- [Name withheld]

Action at instance of landlord against firm of solicitors, arising out of failure to serve break notice in terms of commercial lease.

Clydesdale Bank -v- [Name withheld]

Action at instance of Bank against firm of surveyors, arising out of negligent valuation of commercial property.

Dunfermline Building Society -v- Direct Valuations

Action at instance of Bank against firm of surveyors, arising out of negligent valuation of commercial property.

SEPA -v- [Name withheld]

Action at instance of SEPA against firm of solicitors, arising out of negligent issuing of notice in terms of commercial lease.

Mrs Wing Choi -v- [Name withheld]

Action of professional negligence against a firm of solicitors, arising out alleged failures relative to lease of commercial property.

Dr Nicholas Bozionelos -v- Jarvis Construction (UK) Limited & Others

Acted for insurers in pursuit of action for damages against negligent contractors.

Arthur McManus Gemmell -v- Marleybone, Warwick and Balfour Group Plc and Others [2012] CSIH 57

Acted for successful respondents in respect of an appeal by a party litigant against the judgment of a Sheriff Principal, in a case involving alleged professional negligence in a case which lasted for a number of years.

Mr Dennis Taylor -v- Richard A Sandeman 2011 G.W.D. 35-733

The pursuer sued a solicitor for breach of contract on the grounds of professional negligence. Susan acted for the defender in successfully arguing at debate that the action should be dismissed, on the basis that the pursuer's claim had prescribed.

Regulatory

The Health and Care Professions Council -v- Sergio Braz

Action by regulatory body for order for interim suspension of member.

The Health and Care Professions Council -v- Louise Gillespie

Action by regulatory body for order for interim suspension of member.

Public law

Laura Malone -v- Lord Advocate

Acted for Lord Advocate in action seeking significant damages arising out alleged psychiatric damage caused by stress at work.

Alexander Reid -v- Scottish Ministers [2015] CSOH 84

Action at instance of long term prisoner alleging that the Scottish Ministers had not failed to comply with their duty to provide a prisoner with a reasonable opportunity to rehabilitate himself and to demonstrate that he no longer presented an unacceptable danger to the public.

Petition of Yousef Ansari for Judicial Review [2015] CSOH 168

Acted for Scottish Ministers in petition for judicial review of a failure by the Aberdeen City Council and others to provide him with a reasonable opportunity of rehabilitation.

McGovern -v- Scottish Ministers [2014] CSOH 134

Acted for Scottish Ministers in petition for interdict and suspension of a decree for removal, and interim orders. Motion for interim orders refused.

Hassan Maki Rashid Al-Saffar and Mrs Juman Al-Saffar, for judicial review of decision of Dundee City Council

Acted for applicant in application for judicial review of planning department of Dundee City Council. Proof required in context of judicial review.

Defamation

Graeme McNay -v- Phil Wills, Unreported, Aberdeen Sheriff Court, 4 May 2013

Action for damages for defamation, arising out of letter sent by employee in context of wider commercial disputes between parties. Decision of sheriff issued following proof of two weeks' duration, with defender represented by senior counsel.

Advocates Courts & Tribunals

Court of Session; Commercial Court; High Court; Sheriff Courts; Employment Tribunal.

Advocates Appointments & Memberships

2012 to date: Appointed standing junior counsel to the Scottish Government.

Directories

Susan is recommended in Chambers and Partners and the Legal 500 in respect of her principal areas of practice, namely commercial litigation and restructuring/insolvency.

Chambers and Partners (2016): "Susan's enthusiasm and robust approach is liked by clients. She is attentive and quick to respond." "She's very personable and can work with any client. She is also very good on her feet and good at examining witnesses." "She is very user-friendly and pragmatic and has a great grasp of insolvency work."

Legal 500 (2015): 'She brings a great balance of technical expertise and court craft.' 'Extremely reassuring to clients.'