

Raquel Agnello QC

Call: 1986
 QC: 2009
 Education: BA Hons (Sussex); Diplome D'Etudes Juridiques Françaises; MCI Arb
 Appointments: Deputy Registrar in Bankruptcy & Companies
 Languages: Fluent French & Portuguese, Working knowledge of Swedish, Basic German
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Specialist in corporate and personal insolvency and general company law. Also acts for the Pensions Regulator in relation to 'moral hazard' provisions and issues relating to insolvency, corporate law and pensions. She is well known for her expertise and interest in the area of voluntary arrangements, having been involved in a number of well known cases in this case, from *Re Cranley Mansions Limited*, to the more recent cases of *Inland Revenue v. Wimbledon Football Club* (where she was acting on behalf of the administrators and successfully won against the Inland Revenue both at first instance and in the Court of Appeal) and *Re Newlands School; Chittenden v. Pepper* (2006) (acting on behalf of the supervisor/administrators and successfully defeating the challenge made to the arrangement by the landlord). The last case laid down some important principles relating to voting at creditors meetings. She has been referred to as 'the queen of IVAs and CVAs' (Chambers & Partners 2007). She has advised the Football League in this area and remains sought after for advice in this difficult field of insolvency. Raquel is also recommended as a leading barrister for her niche area of pensions work.

Raquel's reputation in dealing with complicated and difficult bankruptcies continues to grow. She is extremely quick to respond to a trustee's position and to advise on steps which need to be taken in order to secure assets for the benefit of creditors. In *Hickling v. Baker* (2007) she acted for the trustee in bankruptcy in relation to the Bankrupt's challenge to the warrant for his arrest. The Court of Appeal laid down certain principles relating to applications for warrants making it clear that such applications for warrants can be made in certain cases on an ex parte basis. In the more recent case of *Re Faithel*, she successfully applied on behalf of the trustee for an order for the interim delivery up of property acquired by the bankrupt after the making of the bankruptcy order and thereafter succeeded in applying for final declarations relating to that property thereby enabling the trustee in bankruptcy to claim the assets for the benefit of the estate.

She frequently acts for directors in disputes against liquidators and also deals with the area of directors disqualification. In *Re BF Contracts Ltd; Frampton and Bell v. DTI* (2007), she successfully argued that there was no need for an undertaking requiring the disqualification undertaking to be set out in the company's filed accounts in a leave to act application made by the director.

Her cases frequently involve decisions in ground breaking areas. In *Unidare v. Cohen* (2005), she successfully argued that that the shareholder who had the voting 'power' for the purposes of section 435(10) of the Insolvency Act 1986 was the beneficiary and not the registered shareholder in a case where the shares are held on a bare trust. In *Re Sports Betting Media Limited* (2007), the Court had to deal for the first time with a distribution to creditors who have the benefit of a paragraph 99 charge under schedule B1 of the Insolvency Act 1986 where there are insufficient assets available to enable such creditors to be paid in full. The case raised difficult issues relating to the method of distribution because certain of the paragraph 99 creditors had been paid by the previous administrator part of the sums owing during the period of trading under the first administrators. The Court decided the most appropriate method of distribution was to take the sums outstanding as at the time of the creation of the charge and not to have regard to the sums which had already been paid. Importantly the Judge also granted to the administrators an order enabling them to be paid for the work they had carried under despite the fact that there were no assets in the administration other than the charged assets (A Berkley Applegate order).

Building upon her established reputation in dealing with applications under section 236/366 of the Insolvency Act 1986 (*Re XL Communications Limited* (2006)), Raquel was instructed by solicitors to apply to set aside an order which had been made in Gibraltar against a UK resident. (*Re Wardour Ltd*) The case raised issues relating to the conduct of liquidators in making such applications ex parte and whether such an order could be made in Gibraltar without there

being an application under the Gibraltar equivalent of section 426 of the Insolvency Act 1986 being a request made by the Gibraltar Court to the English Court seeking assistance. Very complex issues relating to legal professional privilege had to be dealt with and ultimately the application was withdrawn and the order which had been made ex parte was set aside with an order for costs.

She has also been instructed to act as an expert in English Insolvency law in relation to proceedings in Singapore.

Raquel acted for the Pensions Regulator in the first ever case brought by the Pensions Regulator under the 'moral hazard' provisions of the Pensions Act 2004. *Re Sea Containers Ltd* (2007). Raquel successfully represented the Regulator before the Determinations Panel when the Panel held in favour of the Regulator and directed the issue of financial support directions against the Bermuda based ultimate parent company. Raquel's arguments relating to there being a need to make such orders in particular when dealing with insolvent companies were adopted by the Panel. Raquel also successfully defeated a subsequent disclosure application made by Sea Containers who were seeking the files of other clearance cases which had been dealt with by the Regulator. The latest part of the Sea Containers saga has provided welcome reassurance to companies applying for clearance that information provided to the Regulator remains confidential and is classified as restricted information.

Raquel continues to be instructed in other matters by the Regulator in this fast growing and extremely important area of pensions and insolvency.

Other cases

Nadir v. Hellard (2007) – Raquel acted on behalf of the administrators of Polly Peck in successfully resisting the appeal of Asil Nadir seeking to overturn the first instance decision relating to the admission of the Polly Peck claim into the bankruptcy estate of Mr Nadir.

LCP Retail Ltd v. Segal (2006) – Raquel acted for the liquidator in successfully arguing that the proceeds of sale of assets were not subject to the landlord's distress warrant because by reason of his conduct the landlord had abandoned his walking possession and distress.

Get Me Tickets Ltd (2006) – Raquel was instructed on behalf of the Official Receiver acting as Provisional Liquidator in this public interest petition which resulted in a winding up order being made against the company.

Ice Media Ltd and Blue Point Media Ltd v. Q3 Media Ltd (2006) – Raquel acted on behalf of the liquidators of the two claimants who were seeking an administration order against Q3 Media despite the fact that an interim receiver had been appointed under the Proceeds of Crime Act 2002. The case demonstrated the uneasy relationship between proceeds of crime and insolvency.

Monnington Ltd v. Easier PLC (2005) – Raquel successfully defeated an application made under section 371 of the Companies Act 1985 for an order that a meeting of the company be convened for the removal of two directors and essentially to prevent the appointment of new directors under the articles of association. The Judge held that there was no evidence that it was impracticable to either call or conduct a meeting and dismissed the application.

Green v. BDO Stoy Hayward (2005) – Raquel successfully defeated the liquidator's application seeking disclosure of the former auditors' files under section 236 of the Insolvency Act 1986. This case has made insolvency practitioners take more care in the formulation of any application under section 236.

Re Timothy (2005) – Raquel successfully defeated an application by the Department for Work and Pensions who sought an extension of time for making an application under section 262 of the Insolvency Act 1986 in order to challenge an IVA. In refusing the application, the Judge held that it was important for reason of certainty as to the validity of an IVA that an application was made within the 28 day period and that a delay of nine months with no reason given was unacceptable and the application for an extension would be dismissed.

Re Doltable Ltd (2005) – a case determining the types of companies which can apply for an administration order under Schedule B1 of the Insolvency Act 1986.

Long v Farrer (2004) – an important case dealing with challenging evidence filed in relation to an application for disclosure of documents under section 366 of the Insolvency Act 1986.

Re Trident Fashions (2004) – a landmark case dealing with a challenge under section 7 of the Insolvency Act 1986 seeking to revoke a company voluntary arrangement on the grounds of material irregularity. Raquel successfully defended the chairman at the meeting and office holders and the application was dismissed.

Re Triple Entertainment Ltd (2003) – Raquel acted for the administrators in this application for delivery up of goods in the possession of the administrators but subject to third party claims.

Moutenay v. Treharane (2003) - Raquel acted on behalf of the trustee in bankruptcy in this well known Court of Appeal case.

Member of: Insolvency Lawyers Association, Chancery Bar Association, the Chartered Institute of Arbitrators, and Human Rights Lawyers Association

Languages: Portuguese, French and Swedish. Educated in the United Kingdom, Sweden and France.

Lay Member of the Membership and Authorisation Committee of the Insolvency Practitioners Association

A popular choice as a speaker and has given presentations at many conferences.