



Jerome O'Sullivan

## Description

**Jerome acts for a wide range of commercial and high-net-worth clients in range of commercial disputes including construction, professional negligence, insurance and property disputes.**

Jerome advises on a wide range of construction disputes including; latent and apparent defects, delays, extensions of time, claims for loss and expense, prolongation and disruption; LADs, interim and final accounts, suspension of works, retentions, collateral warranties, NHBC type warranties and nuisance claims.

Jerome succeeded at trial in the Technology and Construction Court in the case of *Freeborn v De Almeida Marcal (t/a Dan Marcal Architects)* [2019] EWHC 454 (TCC), which was a case of wide-spread significance to those who commission construction professionals. Issues included; the scope of the architect's retainer; whether the brief was properly prepared, documented and agreed; the scope of a project manager's responsibilities including obtaining competitive tenders, timely ordering of components and construction defects; the extent to which the architect had delegated his obligations to specialist contractors; and interpretation of the Building Regulations in relation to means of escape from fire.

He has conducted a wide range of professional negligence disputes involving lawyers, valuers, construction, finance and insurance professionals.

Jerome was successful at trial and at the Court of Appeal in the ground-breaking case of *Dreamvar (UK) Limited v (1) Mishcon de Reya (2) Mary Monson Solicitors*, which involved an ID fraud in a property transaction. *Dreamvar* clarified solicitors' potential liabilities for breach of trust, breach of undertaking and breach of warranty of authority, to both the vendor and the purchaser. As a consequence Jerome's comments on the case appeared in the *Daily Telegraph*, *Times* and *Law Gazette*.

He has extensive experience of high value insurance disputes including contractors all risks, commercial property, business interruption, employers and public liability, directors and officer's

liability, new building warranties and pollution liability. His practice includes both advising in regard to the primary claim and any related third party subrogation claim.

Jerome has been involved in a range of contractual disputes involving clients in the insurance, construction, infrastructure, information technology, healthcare, finance, recruitment and shipping sectors.

Jerome's practice also includes a range of insolvency matters including bankruptcy and winding up petitions, related injunctive relief, directors disqualification and other director liabilities on insolvency.

Jerome represents his clients in the various divisions of the High Court including Chancery, Commercial, Companies, Technology & Construction Courts and the Court of Appeal. He also advises in relation to mediation, arbitration and adjudication.

## **Areas of expertise – Construction**

Jerome has advised a sub-contractor in their dispute with the main contractor in relation to tunneling works in the Cross-Rail project in the approximate sum of £4 million. The issues include construction of a bespoke NEC3 Subcontract including the effect of pre-contractual representations, obligations in relation to the design of the permanent and temporary works, the effect of a step-down clause, the effect of an entire agreement clause and variations. Jerome negotiated a settlement of the dispute pre action after the exchange of Part 36 offers.

Jerome represented a high net worth couple in an adjudication in relation to their dispute with a design and build contractor over a £4 million refurbishment of their property in Notting Hill. The issues included the construction of a JCT Standard Building Contract without quantities 2011, the scope of an adjudicator's jurisdiction including considering a substantial counterclaim, delays caused by the contractors, poor administration and management of the project, substantial defective and non-compliant works, loss and expense and variation, setting out errors and liquidated damages.

Jerome acted on behalf of a corporate purchaser, whose ultimate controlling shareholder appears in the Sunday Times Rich List, of two luxury detached properties located in the suburbs of Birmingham. The proceedings were issued in the Technology & Construction Court in the approximate sum of £1 million and involved serious structural defects throughout the properties, the developer's failure to comply with its obligations under the Construction, Design and Management Regulations 2015 and defects in the planning permission. The issues included contractual interpretation, liabilities under the NHBC Buildmark Scheme, expert evidence in relation to effective remedial work to substantial waterproofing defects, defective planning consents, liabilities under the Defective Premises Act 1972, liabilities for loss of use and/or rental income and breaches of the Pre-Action Protocol for Construction & Engineering Disputes.

Acting on behalf of a main contractor in relation to a dispute with a specialist sub-contractor in relation to the design, supply and installation of gas services to a new commercial development in the sum of approximately £1 million pounds. The issues included construction of the express and implied terms of the contract between the parties, delay, loss and expense, incorporation and effect of the sub-contractor's standard terms, the Unfair Contract Terms Act 1977 and the extent to which overheads and profit are recoverable in breach of contract. Jerome secured a settlement advantageous to our

clients at a without prejudice meeting before proceedings commenced.

Acting on behalf of senior manager of a national demolition and civil engineering contractor with a turnover of £400 million in regard to an NHBC building warranty dispute in relation to substantial structural defects to a new property in Gerrard's Cross with remedial costs of approximately £500,000.

Acting on behalf of a sub-contractor in its dispute with the main contractor in relation to infrastructure works carried out to a gyratory system in Rugby involving variations, extensions of time, the effect of a purported payless notice, defective works and the construction of the NEC3 form of contract.

Acting on behalf of a high-net-worth couple in relation to a £1 million dispute with a main contractor in relation to substantive refurbishment works carried out to their Holland Park home. Issues included interpretation of the construction of the JCT Intermediate Building Contract with Contractors Design 2011, the scope of an adjudicator's jurisdiction and power to deal with the Claimant's counterclaim, obligations arising under the Consumer Rights Act 2015, substantial defects left outstanding by the main contractors, mismanagement of the project, the effect of Pay Less Notices and the validity of a completion certificate.

Defending a national demolition and civil engineering contractor with a turnover of £400 million in regard to a £10 million nuisance claim arising out of a large demolition project in the City of London.

### **Areas of expertise – Professional negligence**

Acting on behalf of the Claimant developer purchaser against two firms of solicitors in relation to a fraudulent property transaction. Dreamvar succeeded in obtaining a judgement against the First Defendant for breach of trust after a 6 day Trial. The First Defendant appealed, the Claimant cross-appealed and the Court of Appeal considered it together with a co-joined appeal for four days beginning on 26 February 2018.

The issues included both solicitors' liabilities to the innocent purchaser in the event of a fraudulent property transaction in contract, negligence, trust, warranty of authority, SRA Code of Conduct, the Money Laundering Regulations and the Law Society Code for Completion by Post.

The Court of Appeal held that the Second Defendant was also in breach of trust and breach of undertaking to Dreamvar and were jointly liable with the First Defendant for Dreamvar's losses. The Second Defendant was potentially found to be in breach of warranty of authority, save for the fact that Dreamvar was unable to establish reliance upon same.

---

Jerome acted on behalf of a high net-couple in relation to an architect's professional negligence claim in the sum of approximately £1 million in relation to the defective design and construction of a private cinema and other works to a mansion located in Totteridge, North London. The issues included; the scope of architect's retainer; whether the brief was properly prepared, documented and agreed; the scope of a project manager's responsibilities including obtaining competitive tenders, timely ordering of components and construction defects; the extent to which the architect had delegated his obligations to specialist contractors; and interpretation of the Building Regulations in relation to means of escape from fire. Jerome's clients succeeded at trial in the Technology and Construction Court *Freeborn v De Almeida Marcal (t/a Dan Marcal Architects)* [2019] EWHC 454 (TCC) in a judgment of wide-spread significance to those who commission construction professionals.

Acting for a property developer in regard to a professional negligence claim against a solicitor in regard to a missed deadline on a conditional contract resulting in a loss in the approximate sum of £2.3 million.

### **Areas of expertise – Insurance**

Advising a national demolition and civil engineering contractor with a turnover of £400 million on a failure by the insurers to indemnify the client in regards to a building, plant and loss of rent claim in the approximate sum of £4 million arising from a catastrophic fire.

Advising a national demolition and civil engineering contractor with a turnover of £400 million on a dispute with two insurance companies, both of which were seeking to avoid responsibility for an employer's liability claim approaching £10 million.

Acting for a high net worth couple in a multi-party dispute in regard to loss and damage in the approximate sum of £1.3 million caused by an accidental heating oil spillage.

### **Areas of expertise – Commercial dispute resolution**

Advising a main contractor in relation to a dispute with Network Rail Infrastructure in relation to an outstanding debt and disputed variations in the approximate sum of £500,000 arising from railway works. A statutory demand was issued before Christmas and Network Rail paid the undisputed amount of the debt a few hours before the clients were entitled to seek petition for their winding-up. The disputed element of the debt was settled a few weeks later by negotiation.

Advising a national demolition and civil engineering contractor with a turnover of £400 million in relation to their claim against a former director for breach of contract and breaches of fiduciary duty including misappropriation of funds and business opportunities.

Acting on behalf of a high net worth client, a director of national demolition and civil engineering contractor with a turnover of £400 million, in relation to the sale of a classic car by an auctioneer in Holland and the auctioneer's repeated unlawful refusal to release the sale proceeds to our client. Issues included the scope of the auctioneer's obligations to the client as agents, negligence on the part of the auctioneers, the rights of an undisclosed principal and the relevant merits of the insolvency and litigation procedures.

---

Acting for a firm with an annual turnover of £12 million in a multi-party breach of contract and competition law claim for a sum in excess of £5 million arising out of an agreement to provide advertising on the London Underground.

Acting for property developers in regard to a multi-party dispute arising out of the failure on the part of a number of leaseholders to complete purchases on two blocks of flats after the 'credit crunch' involving claims for sums in excess of £2 million.

### **Legal 500 Recommendations**

Jerome O'Sullivan is a 'tenacious and a strong negotiator'. – Legal 500 2017

"The 'brilliant' Jerome O'Sullivan is the leading advisor for the claimant in a £1.1m dispute against two firms of solicitors in relation to a fraudulent property transaction" – Legal 500 2018

### **Reported cases**

Dreamvar UK Ltd v Mishcon de Reya & Mary Monson Solicitors [2016] EWHC 3316 Ch

Freeborn & Anor v Marcal [2017] EWHC 3046 (TCC)

P&P Property Limited v Owen White & Catlin LLP and Dreamvar (UK) Limited v Mishcon de Reya & Mary Monson Solicitors [2018] EWCA Civ. 1082

Freeborn v De Almeida Marcal (t/a Dan Marcal Architects) [2019] EWHC 454 (TCC),

### **Press commentary – Dreamvar**

The Telegraph

<https://www.telegraph.co.uk/money/consumer-affairs/hope-victims-hijacked-homes-scams-successful-frauds-triple/>

Law Gazette

[https://www.lawgazette.co.uk/law/appeal-rules-against-sellers-solicitors-in-crucial-dreamvar-liability-dispute/5066119.article?utm\\_source=dispatch&utm\\_medium=email&utm\\_campaign=%20GAZ1410](https://www.lawgazette.co.uk/law/appeal-rules-against-sellers-solicitors-in-crucial-dreamvar-liability-dispute/5066119.article?utm_source=dispatch&utm_medium=email&utm_campaign=%20GAZ1410)

The Times

<https://www.thetimes.co.uk/article/watch-out-for-the-fraudsters-selling-homes-they-dont-own-3rm8w9l7h>

Today's Conveyancer

<https://www.todaysconveyancer.co.uk/main-news/breaking-news-court-appeal-rules->

dreamvar-decision-stands/

<https://www.todaysconveyancer.co.uk/main-news/qa-jerome-osullivan-acted-dreamvar/>

## Legal Futures

[Dreamvar: CA finds seller's solicitor liable for imposter fraud – but buyer's conveyancer still on hook too](#)

[Check your retainers – the lessons of Dreamvar](#)

## Press commentary – Freeborn

### The Times

<https://www.thetimes.co.uk/article/banker-sues-over-home-cinema-he-says-is-a-horror-glhk8nfp5>

### London Standard

<https://www.standard.co.uk/news/london/financier-suing-architect-for-1m-over-ugly-floating-home-cinema-a4008916.html>

### Daily Mail

<https://www.dailymail.co.uk/news/article-6463853/Financier-sues-architect-nearly-1m-wow-factor-cinema-disaster-7m-home.html>

### The Architects Journal

<https://www.architectsjournal.co.uk/news/wonky-home-cinema-court-case-warning-to-all-architects/10040586.article>

<https://www.journalism.co.uk/press-releases/homeowners-secure-500-000-judgment-against-negligent-architect/s66/a735254/>

### Scottish Construction Now

<https://www.scottishconstructionnow.com/article/and-finally-architect-sued-for-not-delivering-wow-factor>

### Hidden Wires

<http://www.hiddenwires.co.uk/news/article/financier-wins-500-000-damages-in-court-case-over-ugly-duckling-home-cinema-project>

### **Professional memberships & awards**

Solicitor of the Senior Courts of England & Wales

Fellow of the Chartered Insurance Institute

Chartered Insurance Practitioner

Member of the Chartered Institute of Arbitrators

### **Testimonials**

“Jerome has always given us practical and accurate legal advice in regard to the legal and quantum aspects of disputes. He is very practical and commercial and has very good negotiating abilities. His strategic and tactical focus is on reaching an acceptable settlement as soon as reasonably possible, with a view to avoiding us suffering the costs and risks of a trial lasting several weeks.”• **–John Keehan – Deputy Managing Director at Keltbray Group (Holdings) Ltd**

“You’re a genius. Please bite their hand off!..... Very many thanks – a really good result!”

“That’s great news. Thank you so much for all your hard work – I’m not embarrassed to say that we would never have achieved this result without your drive, professional knowledge and persistence.” – **Finance Director of a Principal Contractor**