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JOSH BAKER

Year of Call

2019 Barrister, Hong Kong

Academic

2018 PCLL, University of Hong Kong

2016 LLM (Distinction, First in Year), University of Hong Kong

2014 MA, University of Cambridge

Practice profile

Josh was called to the Bar in June 2019 having worked in litigation in Hong Kong with solicitors' firms for seven years. He is developing practices in commercial, public and family law. In March 2019 he served as marshal to Her Honour Judge S D Melloy.

Josh graduated first in his year from the LLM in Human Rights at the University of Hong Kong in 2016. He read law as an undergraduate at the University of Cambridge.

Josh has experience across a range of commercial matters, and is comfortable handling heavy work as part of a team as well on urgent and *ex parte* applications. He has a particular knowledge of civil fraud, asset tracing and recovery, and has advised in the banking and financial services context. He frequently advises on strategy and the preparation of evidence. He is the author of the new chapter on agency in *Chitty on Contracts: Hong Kong Specific Contracts* and a contributor to the White Book.

In the public law space, Josh has acted for individuals, NGOs and incorporated applicants. He often advises on matters with a civil liberties and fundamental rights dimension, and where international law is material. He is very familiar with discrimination law in the private and public law contexts.

Josh works in all areas of family law. He has a particular interest in child protection, and is often consulted on questions of family migration. He is co-author *Atkins' Court Forms* in family law and a contributor to *Duxbury, Etc.*

Josh serves on the Constitutional Affairs and Human Rights Committee and the Legal Aid Reform Committee of the Bar Association.

Selected work

Banking

- *Asia Steel & Metals Limited v The Hongkong and Shanghai Banking Corporation Limited* HCA 578/2020. Acted for commodities group in US\$1.24M claim for negligence and dishonest assistance arising from its bank's handling of payment instructions.

Civil actions involving public authorities

- *Lee Sui Hing v Secretary for Justice and Commissioner of Police* DCCJ 6171/2019. Acting for the plaintiff in claims in negligence and for unconstitutional deprivation of liberty, arising from police and prosecution's handling of fingerprint evidence and objections to bail, before charges were withdrawn. With Shaphan Marwah.
- *Hospital Authority v Lopez* DCCJ 3315/2020. Acting for defendant in the Authority's claim for medical fees.

Civil fraud and asset recovery

- *Golf Gifts & Gallery, Inc v Sinorise Asset Management Ltd & Anor* HCA 560/2021. *Mareva* and *Norwich Pharmacal* relief in aid of tracing and recovery efforts of HK\$3.43M misappropriated in an email and invoice fraud.
- *Selfcare Corporation Pty Ltd v Wan Ke Fei* HCMP 793/2021. *Mareva* injunction order under the section 21M jurisdiction, in aid of three worldwide freezing orders made by the Federal Court of Australia, for AU\$1M / HK\$5.7M in damages for intellectual property wrongs.
- *Selfcare Corporation Pty Ltd v Hang Seng Bank, Limited and Bank of China (Hong Kong) Limited* HCMP 813/2021. *Norwich Pharmacal* relief in aid of claims proceeding in the Federal Court of Australia.

Commercial

- *LMR Partners Limited & LMR Partners LLC v LFD* HCA 1632/2010. Claim against former hedge fund portfolio manager for clawback of US\$1.75M / HK\$13.6M in compensation.
- *Henderson v Henderson* HCMP 1780/2013. HK\$13M claim for loss occasioned by the wrongful grant of worldwide *Mareva* relief pursuant to the undertaking in damages. With Azan Marwah.

Construction

- *Hydrotech Waterproofing Solutions Ltd v Shun Yuen Construction Co Ltd* [2021] HKCFI 2785. Application to amend statement of claim and reply shortly before trial. With Phillip Rompotis.
- *KH Foundations v Chun Yip Construction Co Ltd* [2020] HKCFI 3019. Applications for production of documents said to be commercially sensitive under O.24 r.11 and further and better particulars. With Phillip Rompotis.

Family law and practice

- *JS v JICV* FCMC12707/2019. Application for litigation funding, MPS and children's maintenance.
- *Singh Sandeep v Adita Adila Afriani* [2021] HKCA 469. Procedure to set aside decree nisi on grounds of fraud, misrepresentation and non-service. With Azan Marwah.
- *SG v GDV* FCMC 10217/2020. Ancillary relief and children's arrangements.
- *BVDR v TOYJ* FCMP 171/2020. Applications for interim sole custody, care and control and a non-molestation order.
- *THBRS & Anor v AA* FCMP 84/2014. Costs of application for a declaration of paternity, on the basis of evasive litigation conduct. With Azan Marwah.
- Advised a multi-jurisdictional family trust on the use of overseas corporate structures.

Habeas corpus

- *Harjang Singh v Secretary for Security & Anor* [2021] HKCFI 705. Appeared for applicant seeking release on *Hardial Singh* grounds following 30 months of administrative detention. With Tim Parker.

Judicial review

- *SRDMC v Commissioner of Police* HCAL 591/2021. Challenge to the Commissioner's freeze of an eight-figure sum by issue of a 'letter of no consent'

- *Chairman of the Southern District Council v Secretary of the Southern District Council* [2021] HKCFI 500, [2021] HKCFI 1920. Challenge to decision not to provide secretarial services in respect of meeting agenda items said to be *ultra vires* the Council's statutory powers. With Azan Marwah and Nigel Kat SC.
- *Y v ICAC* [2020] HKCFI 161. Appeared in application for judicial review of ICAC warrant to enter and search premises granted under the Prevention of Bribery Ordinance, turning in part on whether warrant defective for generality. With Tim Parker and Jin Pao SC.
- *He Wei v Director of Immigration* [2020] HKCFI 328. Application for leave to apply for judicial review of prospective investment visa decision. Turned in part on whether Director's valuation of company was lawful, and whether a premature application should be permitted. With Shaphan Marwah.
- *Medina Amalia Macha v Commissioner of Police* HCAL 466/2021. Victim of forced labour's claims for breach of BOR 4 procedural obligations. With Azan Marwah.
- *S and K v Torture Claims Appeal Board* [2021] HKCFI 2750. Application for leave to apply for JR of non-refoulement decision, turning in part on whether adequate inquiries made of centralised identity system in country of origin.

Public law advice

- Advised a person in custody whose first language is very uncommon, on a challenge to prison authorities' refusal to permit instructions to be taken and advice given *via* telephone to an overseas interpreter.
- Advising a screened in refugee on tort and BOR 3 claims against the Director of Immigration and Commissioner for Customs and Excise for mistreatment in administrative detention.
- Advised individuals whose bank accounts are frozen pursuant to Letters of No Consent issued under the Organized and Serious Crimes Ordinance, on systemic and fact-specific challenges by application for judicial review.
- Advised an association of stakeholders on a constitutional and fundamental rights challenge to aspects of a regulatory Bill laid before the Legislative Council.
- Advised a leading NGO on a challenge to Director of Immigration's refusal to permit wife and mother to leave Hong Kong with her child.

Other civil work

- Advised an international cosmetics distributor on legal issues surrounding its proposed multi-layered marketing scheme.
- *Busby v Mahtani* HCSD 21/2018. Application to set aside statutory demand.

Publications

- Halsbury's Hong Kong, *Misrepresentation and Fraud* (forthcoming reissue). With Kevin Lee and Damien McDonald.
- Contributor, *Hong Kong Civil Procedure 2020-2022*.
- *Butterworths Hong Kong Banking Law Handbook* (5th ed, 2020). With Kevin Lee.
- Agency (chapter 1) in *Chitty on Contracts: Hong Kong Specific Contracts* (6th ed, 2019).
- Novelty and Orthodoxy: 2018 in Civil Justice, *Special Release to Hong Kong Civil Procedure 2020*.

- Contributor, *Duxbury, Etc: Practical Guide to Hong Kong Family Law and Courts* (2019-2021).
- Contributor, General Editor's Updates, *Archbold* 2019-2021.
- Family Law in *Atkins' Court Forms Hong Kong* (2019 reissue). With Azan Marwah.
- Eastern and Western perspectives of surrogacy: out with the old, in with the best interests? [2016] 4 *International Family Law Journal*.