

SIMON BURNETT

GAP IN THE MARKET

After six years at Gilbert + Tobin **Simon Burnett** moved to London to work in a magic circle firm, before completing an MBA. Now, he's taking on litigation funding. **Sasha Borissenko** reports

LONDON-BASED Balance Legal Capital LLP co-founder Simon Burnett is the oldest of four children raised by a single mum in Sydney.

“My mum is the hardest working person I’ve ever known,” says Simon. “When the going got tough in private practice I would think about my mum regularly working on her catering business through the night then looking after four children during the day, and would immediately stop feeling sorry for myself. I don’t know how she managed it.”

She would encourage all four siblings to be actively involved in everything, particularly



sport, and it was his love of competitive sports, and the influence of people he met through various sporting teams, that prompted Simon to pursue a career in the law.

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In 2011, after six years working as a litigator for Gilbert + Tobin in Sydney, Simon decided to do the “typical Aussie/Kiwi thing” by moving to London to work at Freshfields Bruckhaus Deringer LLP.



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It was an exciting time for a litigator to come to London, he says. The Lord Justice Leveson phone-hacking inquiry was in full swing and Russian oligarchs were fighting multi-billion pound disputes in the London High Court. Leading UK firms were in need of experienced litigators. The first case Simon worked on at Freshfields was the high profile dispute between the late Boris Berezovsky and Roman Abramovich.

“Working in London made me realise what a strong foundation Gilbert + Tobin had given me. The smaller teams and fast pace meant that I got lots of responsibility and experience early in my career, including on several large trials. This made adjusting to the demands of working in a large international firm easier. I sense the general view in London is still that Aussie and Kiwi lawyers fit in well in UK firms because they are generally hard working, resilient and don’t take themselves too seriously.”

While it was a fantastic two years at Freshfields, Simon wanted to see what else was out there before committing to a life in a law firm. He won a place on the MBA program at London Business School.

“I was always interested in business and the commercial drivers of my clients. I started my MBA with an open mind about what I might do next, however, perhaps for my sins, I was quickly drawn back to the legal sector and developed a particular interest in the ‘business of law’ and the changes affecting the industry.

“Legal practice hasn’t changed much in the last 100 years but, currently, the combination

of client sensitivity to price and traditional billing methods, lawyers demanding greater flexibility and control over their careers, and technology that can do routine legal work more cheaply and accurately, has placed the industry in a state of flux. The traditional law firm model has to adapt or die.”

Seeing a gap in the market, while completing his MBA, Simon provided consultancy services to international law firms on innovation in the legal sector, particularly alternative models for delivering legal services.

Balance Legal Capital LLP

In early 2015, Simon was introduced to Robert Rothkopf, a disputes lawyer who had just left Herbert Smith Freehills to start a litigation fund. Simon agreed to assist Rob in preparing the business plan and only a few months later, Balance Legal Capital was born. The firm, which advises a private

CAREER TIMELINE



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fund on investments in commercial litigation and arbitration, now comprises four full-time litigators and is chaired by Lord David Gold, former senior partner of Herbert Smith.

According to Simon, the use of third party funding is on the rise.

“Third party litigation finance is a nascent industry in the UK but, increasingly, lawyers and their clients are seeing the benefits of using it to fund their disputes. Third party funding levels the playing field, allowing companies of all sizes to access the courts if they have a good claim.

“Even companies that traditionally fund their own lawyers are turning to litigation finance in order to use their capital for other projects, while still pursuing worthwhile claims. In both cases, third party funding allows the company to shift the financial risks associated with the dispute to a third party in exchange for a portion of a future recovery that is contingent upon success in the case.”

One of the main criticisms of third party funding is that it is expensive. However, according to Simon, the cost of the funding reflects the risks the funder is taking.

“Our funding is non-recourse, so if ultimately there is no recovery in the case, we lose our investment and the claimant owes us nothing. Litigation is inherently risky and we are usually asked to assess a case at a very early stage. If the matter goes to trial, much depends on the performance of key witnesses and the attitude of the man or woman in the wig. Third party funders need terms that enable the returns they make on winning cases to cover the losses they incur when cases lose.

“Increased competition in the UK has resulted in more flexible funding terms for clients than those we have observed in the Australian context where funders still tend

to insist on taking up to 50% of any recovery. My sense is that this will change. Last month, we met with a partner from a leading Sydney firm on his visit to London to meet with funders, because he wants his clients to be able to access better funding terms from UK funders for Australian cases.”

Bucking the trend

Litigation finance is an industry that still gets a bad rap in many parts of the world, Simon says. Singapore and Hong Kong are still considering whether to create an exception to the ancient doctrines of champerty and maintenance that prohibit third party funding. The High Court of Ireland rejected third party funding in a test case decided in

April 2016.

“There’s still a perception out there that funders are going around drumming up frivolous cases that should never be brought to court. It is in fact the opposite. We only invest in meritorious cases because these are the cases that are most likely to be settled or decided favourably, therefore delivering us a return. In fact, funders provide a further filter for unmeritorious cases because our due diligence leads to increased rigor and objectivity in assessing issues, thereby weeding out bad cases at an early stage.”

Where to from here?

It is early days but we are tracking well, Simon says. Balance is in its second year, has

BEREZOVSKY V ABRAMOVICH



The High Court case of *Berezovsky v Abramovich* was heard by Lady Justice Gloster over four months in 2011 and 2012. In the proceedings, Berezovsky claimed damages in excess of £5bn for alleged losses caused by alleged intimidation by Abramovich, which resulted in him being forced to sell his interest in Sibneft – a Russian oil company – at a substantial undervalue. Berezovsky also claimed that Abramovich was in breach of contract and/or trust when he sold a shareholding in RusAl – a Russian aluminum company – to another oligarch, Oleg Deripaska.

Lady Justice Gloster handed down her judgment on 31 August 2012, finding Berezovsky to be an “unimpressive, and inherently unreliable, witness” and dismissing his claims. The case was reported in the media as being the biggest, and most expensive, private court case in British legal history.

Berezovsky was found hanged at his residence in March 2013. In March 2014, the coroner, following an inquest into his death, returned an open verdict on the cause of his death, due to conflicting evidence.

doubled the size of its team and is receiving strong support from the legal community in the UK and Australia.

“This is still a business that is fundamentally about relationships. About a quarter of our time is spent meeting with lawyers and building these relationships. The rest of our time is divided between assessing cases, preparing funding offers and the documentation that goes with them, and, of course, dealing with the challenges of running an early stage business, such as fixing a jammed printer!

“We take lots of personal satisfaction in what we do. As in our old roles, we still attend high level meetings and think about complicated issues on significant

cases, but now we also have the agility of a small organisation. We can have an idea on a Monday and implement it on the Wednesday, which would never happen in

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a big organisation. We often ride our bikes to meetings around London.”

Long term, Simon hopes to return to Australia, but London is home for the foreseeable future, he says.

“I have a 20-month-old boy, Freddy, and another baby on the way in late July. My partner and I are close to our families. Some of my happiest memories are of playing

cricket with my brothers in my backyard in Sydney all year round. I want to give our children the same experiences. I guess we’ll just have to make Balance a truly international business!” **AL**

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