

Alexander Kingston-Splatt

Called: 2017
alexanderkingston-splatt@fivepaper.com



PROFILE

Alex has a busy Commercial Chancery practice with an emphasis on commercial litigation, civil fraud, banking and finance, insolvency, shareholder and corporate disputes and professional negligence. He has considerable experience of cross-border litigation and advising on conflicts of law and issues of jurisdiction.

Before coming to the Bar, Alex was admitted as a solicitor in 2012. He practised as a commercial litigator at a leading City law firm. He draws on that experience to offer expertise and insight beyond his year of Call. Alex joined Five Paper as a tenant in 2017.

Since July 2019, Alex has served as a member of the Executive Committee of Five Paper, the body responsible for the financial management and strategic oversight of chambers.

EXPERTISE

Commercial/Banking & Finance

Alex acts for clients across various sectors of industry, including light and heavy manufacturing, natural resources and energy production, information technology, aerospace, retail, real estate and construction. His expertise covers all aspects of the supply of goods and services, disputes about the correct interpretation and the enforcement of contracts, issues relating to title, and trusts arising in the context of commercial transactions. Alex's commercial work also covers the economic torts, such as procuring a breach of contract. Alex also has considerable experience of banking and finance disputes and frequently acts for banks, asset-based lenders and other financial institutions in enforcement and asset recovery proceedings.

Alex has experience of obtaining and resisting applications for interim orders to support commercial claims,

such as freezing and search orders and *Norwich Pharmacal* relief.

Recent and notable work includes:

- **Vitol SA v Genser Energy Ghana Ltd** [2022] EWHC 1812 (Commercial Court) (Ms Lesley Anderson KC). Alex acted for the defendant in Vitol's claim for £17m arising under a contract for the supply of propane following the occurrence of an alleged force majeure event. The case involved complex issues of estoppel (promissory, by representation, and by convention) and issues of the domestic regulation of energy production in Ghana. Led by Simon Mills. Instructed by Addleshaw Goddard LLP. See also [2022] EWHC 1955 (decision on costs, which included consideration of the caselaw on payment of interest upon costs).
- **Castle Trust plc v Hine** [2022] (County Court at Central London) (HHJ Dight CBE) (Ongoing). Alex recently acted for Castle Trust in a four-day trial in its proceedings to enforce two buy-to-let charges worth c.£2m granted by Mr and Mrs Hine over properties in London. The defendants counterclaimed to set the mortgages aside on the grounds of *non est factum* arising from their alleged misunderstanding of the nature of the transactions, under which the repayment obligation was linked to the performance of an index published by Halifax. The defendants also argued that the charges fell within the definition of contracts for differences within the meaning of art. 85 of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. Judgment is awaited. Instructed by Brecher LLP.
- **Lawless v Parquet House Ltd (t/a Walking on Wood)** [2022] (County Court at Liverpool) (HHJ Carter). Alex recently acted for the defendant in a three-day trial. The claimant sought c.£500,000 in damages for breach of contract arising from the allegedly defective installation of wooden flooring through a luxury penthouse apartment. The case involved questions of the appropriate measure of damages in defective work carried out to buildings. Judgment is awaited. Instructed by RWK Goodman LLP.
- **Marsh & Parsons v Jagdev** [2022] (County Court at Central London and Court of Appeal) (Ongoing). Alex acted for the claimant at first instance and is acting in the defendant's appeal to the Court of Appeal. The defendant maintains that he is entitled to repayment of sums paid under a contract by way of unjust enrichment, on the grounds of the claimant's alleged subsequent repudiatory breach of that contract. Instructed by Harwood & Co.
- **Asset Advantage v Karpal** [2021] (County Court at Central London) (HHJ Raeside KC). Goods and services were supplied to fit-out a trampoline park. These goods and services were listed in schedules to HP agreements. The defendant denied liability under his guarantees and legal charges on the grounds that the claimant did not have title to the goods bailed under the HP agreements, because title had been lost when they were affixed to the property rented by the defendant's company. The court held that the defendant was bound by the charges and guarantees, and that by reason of his contractual obligations the defendant was estopped from asserting that title to the assets had passed to the landlord upon their being affixed to the premises. Led by Simon Mills. Instructed by Greenhalgh Kerr.
- **Brown v ES and Ors** [2021] (High Court, Business and Property Courts) (Mr Justice Snowden). Appearing for the respondents, Alex successfully resisted an urgent application for pre-action disclosure, and for the production of copy documents under the Companies Act 2006, in order to support an alleged derivative claim. Instructed by De Jure Chambers.
- **N v G** [2021] (High Court, King's Bench Division) (Mr Justice Nicklin). Alex successfully resisted an application for a *Norwich Pharmacal* order on various grounds, including improper service and inadequate evidence supporting the cross-undertaking. Instructed by Ellisons Solicitors.
- **A v B** [2021]. Advising on governing law and jurisdiction under a marketing contract between English and Australian parties.

Civil Fraud

Much of Alex's work involves acting for claimants and defendants in proceedings whose main ingredient is allegations of fraud and related misconduct, predominantly arising in a commercial or corporate context. He acts in cases involving deceit and fraudulent misrepresentation, conspiracy, breach of trust and fiduciary duty,

and dishonest assistance/knowing receipt. Alex is also experienced in obtaining and resisting applications for interim orders to support fraud claims, such as freezing and search orders, *Norwich Pharmacal* relief and *Bankers Trust* orders.

Most recently, Alex has acted as junior counsel for the administrators of the Arena group of companies, in what is believed to be the largest hire purchase fraud ever committed in the UK.

Recent and notable work includes:

- ***Arena Television Ltd (in admin.) and Ors v Yeowart & Hopkinson*** [2022] EWHC 918 (Ch) (Green J). Alex acted for the claimants sought £250m damages from their former directors arising out of alleged fraud involving HP agreements and financing of assets that did not exist and/or bore forged serial numbers. The claimants obtained a worldwide freezing order limited to £250m and a proprietary injunction. The claimants obtained summary judgment on liability and interim order for £100m on account of damages pending remedies hearing. Led by Simon Mills. Instructed by Addleshaw Goddard LLP.
- ***Arena Television Ltd (in admin.) and Ors v Yeowart & Hopkinson*** [2022] EWHC 952 (Ch) (ICC Judge Mullen). Bankruptcy orders were made on expedited petitions before the judgment debt was payable. The judge held there was a compelling reason immediately to appoint trustees in bankruptcy without the Official Receiver first being appointed under the Insolvency Act 1986, even though the trustees in bankruptcy and the joint administrators of the petitioners were at the same firm (Kroll). Led by Simon Mills. Instructed by Addleshaw Goddard LLP.
- ***Arena Television Ltd (in admin.) and Ors v Froom & Cousins*** [2022] (High Court, Business and Properties Courts) (Ongoing). Alex is currently acting for the claimants who seek £284m in damages arising out of alleged conspiracies involving HP agreements and financing of assets that did not exist and/or bore forged serial numbers, and financial manipulation of company accounts for the purpose of deceiving various third parties and concealing the scale of the main fraud being perpetrated against the claimants and others. Led by Simon Mills. Instructed by Addleshaw Goddard LLP.
- ***L v T*** [2022] (Ongoing). Advising as to the potential liability of certain parties for unlawful means conspiracy arising out of the arguable avoidance of the terms of an overage agreement under which payment for several million pounds may arguably fall due.
- ***FB v D and Ors*** [2021] (High Court, Business and Property Courts) (Ongoing). Alex acts for the claimant against its former director (together with various related parties) in proceedings which allege extensive misappropriations and misapplications of significant company funds, and breaches of the former director's duties to the company in his alleged mishandling of the substantial property development which C was incorporated to exploit. Instructed by Hodge, Jones & Allen.
- ***McKenzie v Williams*** [2021] (High Court, Business and Property Courts in Manchester). Alex acted as sole counsel for the defendant who had been accused of establishing a Ponzi scheme, breach of trust and fiduciary duty, and the misappropriation of significant funds held on trust within bank accounts across various jurisdictions. The claim was issued in 2007 and default judgment was entered into 2012 for c. £2.2m. Alex successfully set aside that judgment in September 2019. The case was listed for a 7-day trial in 2022 but settled prior to trial. Instructed by Francis Wilks & Jones.
- ***H v E*** [2021]. Alex acted for the potential claimant in her claim against an individual trading as a 'litigation friend' who deceived her into parting with c.£500,000 on the false premise that he was pursuing litigation against members of C's family. The litigation was a fiction, in aid of which D had forged various documents and correspondence with the court and had acted in breach of the Legal Services Act 2007.

Company, Shareholder & Partnership Disputes

Alex is frequently instructed in disputes arising out of the running of businesses, including those between shareholders of companies and individuals working in partnership, including in unfair prejudice petitions and derivative actions brought by shareholders in the name of their company.

Alex has considerable experience of advising on articles of association and other constitutional documents,

and related matters of company procedure. This includes advising in relation to issues concerning shareholdings, the appointment and removal of directors and the interpretation and enforcement of articles of association.

Recent and notable work includes:

- **H v F** [2022]. Alex acted for a director of a company which operates a very successful restaurant in a threatened unfair prejudice action, and in a related potential claim to recover substantial sums which were paid to a co-director and a company connected with that co-director allegedly in breach of fiduciary duty, for services provided by that connected company at grossly inflated values. Instructed by Equality Law.
- **Brauer v Wilkinson** [2021] (High Court, Business and Property Courts). Alex acted for the defendant to a derivative action alleging breach of fiduciary duty by the defendant in establishing separate businesses which operated in the same industry of the company of which she was a director. The case settled. Instructed by Bird & Bird LLP.
- **Ghanem v Shalaby** [2021] (High Court of Justice, Business and Property Courts). Acting for the defendant in proceedings arising out of the dissolution of a partnership. The case settled. Instructed by Hodge, Jones & Allen.
- **Nicholls v Michael and Ors** [2021] (County Court at Bristol). Alex acted for the defendants to an action brought by a former partner for post-dissolution profits made by the remaining partners under s.42 of the Partnership Act 1890. The case settled at mediation. Instructed by Nalders LLP.
- **Brown v ES and Ors** [2021] (High Court, Business and Property Courts) (Mr Justice Snowden). Appearing for the respondents, Alex successfully resisted an urgent application for pre-action disclosure, and for the production of copy documents under the Companies Act 2006, in order to support an allegedly derivative claim. Instructed by De Jure Chambers.

Insolvency

Alex has considerable experience of all types of insolvency claims and applications, including corporate and personal insolvency. His experience includes pursuing and defending misfeasance claims, various applications by Insolvency Practitioners and winding-up and bankruptcy petitions).

Recent and notable work includes:

- **Arena Television Ltd (in admin.) and Ors v Yeowart & Hopkinson** [2022] EWHC 952 (Ch) (ICC Judge Mullen). Bankruptcy orders were made on expedited petitions before the judgment debt was payable. The judge held there was a compelling reason immediately to appoint trustees in bankruptcy without the Official Receiver first being appointed under the Insolvency Act 1986, even though the trustees in bankruptcy and the joint administrators of the petitioners were at the same firm (Kroll). Led by Simon Mills. Instructed by Addleshaw Goddard LLP.
- **EMC Technical Services and Ors v Grenville** [2022] (High Court of Justice, Business and Property Courts in Manchester). Alex acted for a defendant director of a company in liquidation in proceedings brought against him alleging that certain payments were preferences. Instructed by Francis Wilks & Jones.
- **Re Ottery Ltd** [2021] EWHC 95 (Ch) (ICC Judge Jones). Alex successfully obtained linked winding-up and bankruptcy orders in respect of fees due to a retired professional trustee of a discretionary trust, whom the respondents alleged had been negligent in the management of litigation against an American company the majority of whose shares were held by the trust. The case involved complex issues of the application of the reflective loss principle. Instructed by Prince Evans LLP.
- **Manolete Partners v Ahmed and Anor** [2021] (High Court of Justice, Business and Property Courts). Alex acted for the defendants (a former company director and another of his companies) in defending proceedings for c.£2.45m brought by an assignee of the liquidator in proceedings which alleged that various transactions were at an undervalue and constituted preferences. The case settled following

service of the Points of Defence. Led by Simon Mills. Instructed by BP Collins LLP.

- **Re a Company** [2020]. Alex acted for a commercial tenant in advising whether substantial monies which were supposed to be held in trust by its landlord under the terms of a rent deposit deed remained subject to the trust upon the landlord entering insolvent liquidation, despite the funds having been paid into the company's general trading account.
- **Re a Company** [2020]. Alex acted for a creditor against a BVI-registered company in a petition involving complex issues of the court's jurisdiction to wind-up unregistered companies under s.221 of the Insolvency Act 1986.

Professional Negligence

Alex acts in negligence claims against various professionals. As a former solicitor, he is most frequently instructed to act in claims involving allegations of negligence against solicitors, but he also acts in claims against other professionals.

Recent and notable work includes:

- **M v GM** [2022] (Ongoing). Alex acts for a claimant against his former solicitors (now in liquidation) for the negligent conduct of proceedings brought against the client for his removal as executor of his late brother's estate. Instructed by Druces LLP.
- **G v H** [2022] (Ongoing). Alex acts for a property company in a claim against its insurance brokers for having obtained a policy of insurance against the wrong property. The premises owned by the client were destroyed in an arson. The client claims c.£400,000 for the reinstatement of the property. Instructed by Forbes Hall LLP.
- **HB v C** [2021]. Alex acted for a property investor in a claim arising out of a conveyancer's negligent advice as to the scope and application of a series of restrictive covenants and easements affecting a plot of development land. Instructed by Goodman Derrick LLP.
- **A v G** [2020]. Alex acted for a potential claimant as to its claim against a firm of solicitors for breach of trust arising out of the treatment of funds held by the solicitors in their client account.

FURTHER INFO

Qualifications

- Legal Practice Course – University of Law – Distinction
- LLB – University of Kent – First Class

Scholarships and Prizes

- Kent Law School Prize for Special Achievement

Memberships

- COMBAR
- Member of the Junior COMBAR Committee
- The Law Society
- R3