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Zachary Kell

Called: 2015
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"Exactly the sort of modern barrister that you would like on your team."

Legal 500 London Bar 2023, Rising Star in Insolvency

PROFILE

Zachary has a busy Commercial Chancery practice which is beyond his year of Call with particular experience in Commercial Law, Civil Fraud, Insolvency & Restructuring, Company Law and Shareholders Disputes. He regularly appears in the High Court, often acting in disputes in the Insolvency & Companies List, Business List of the Chancery Division and the King's Bench Division. He also has experience of appearing in the Court of Appeal.

In the 2023 edition of the Legal 500, Zachary has been ranked as a Rising Star for Insolvency, being described as *"exactly the sort of modern barrister that you would like on your team"*. In each and every case, Zachary brings a modern and commercially minded analysis to ensure that his clients obtain the best result possible.

Zachary has developed a practice which often involves cross-border litigation and has been instructed both as sole counsel and as part of an international legal team in disputes relating to the law of the UAE, Cyprus, Luxembourg, Morocco, France, Italy, Spain and the CIS. He also consults to a Tier 1 firm of advocates in the Isle of Man.

Zachary often writes articles on his areas of practice and is a regular contributor to the Journal of International Banking & Financial Law.

EXPERTISE

Civil Fraud

Zachary has considerable experience of civil fraud matters, primarily in a commercial or corporate context. He

often deals with cases involving serious allegations of dishonesty including in relation to: deceit/fraudulent misrepresentation; conspiracy; breach of fiduciary duty and breach of trust; dishonest assistance and accessory liability and interlocutory relief (freezing injunctions, search orders, etc.).

Recent work includes:

- *X v Y* (ongoing): advising on a cross-border fraud worth c.£90million;
- *Re Kahn* (ongoing): defending claims for alleged deceit and conspiracy in the sum of £2.5million (leading Joe McBrien);
- *X v Y* (ongoing): ad hoc arbitration dealing with allegations of dishonest breach of a pension trust;
- *Raja v McMillan* [2021] EWCA Civ 1103: an appeal to the Court of Appeal (before Underhill, Poppelwell and Nugee LLJ) in relation to a claim for unlawful means conspiracy. This is the first time the Court of Appeal has looked at the question of whether a director can conspire with his own 'one-man' company (i.e. a company of which he is sole director and majority shareholder) in a case of civil conspiracy. Zachary was led by Philip Coppel QC (recently referred to in *Civil Fraud, 1st Ed. First Supplement*);
- *X v Y*: Advising on questions of jurisdiction in a banking fraud estimated at c.$500million (as first junior counsel);
- *X v Y*: Advising on proposed cross-border fraud and restitution claims (with questions of banking law) estimated at c.$250million (as second junior counsel);
- *Arif v Sanger* CA-2022-000024: Successfully resisted, in the Court of Appeal, the Defendant's application for permission to bring a second appeal (and further application for permission to appeal a costs order) after producing a respondent's statement under CPR 52CPD para 19(1);
- *Circumference v Martin* [2021] EWHC 2691 (Ch): various applications following the grant of worldwide freezing injunctions and an unless order in England and a freezing order in Luxembourg (led by Simon Mills; instructed by Dentons UK and Middle East LLP). The case was also reported in Law360 which can be read here;
- *Circumference v Martin* [2021] EWHC 2389 (Ch): successfully obtained an application for an unless order in respect of breaches of a worldwide freezing order covering £5.44m (led by Simon Mills; instructed by Dentons UK and Middle East LLP). Zachary was also led by Simon Mills in the previous application for a worldwide freezing order;
- *Arif v Sanger* [2021] EWHC 3475 (QB): Zachary successfully resisted (led by Rachel Sleeman) an appeal before Bourne J. in relation to an application for summary judgment on the basis that a claim in deceit was statute barred under the Limitation Act 1980 and that the Claimant had no real prospect of successfully relying upon ss. 32(1)(a) (actions based upon the fraud) and 32(1)(b) (where any relevant fact has been deliberately concealed). In particular, the Appellant argued that because the Respondent was a director and therefore subject to the general duties of a director set out in ss.171-177 of the Companies Act 2006, the Respondent was legally obliged to make enquiries which would have uncovered the fraud. However, this argument failed because the relevant sections of the Companies Act 2006 and the Limitation Act 1980 have different purposes;
- *Arif v Sanger* [2021] EWHC 1183 (QB): successfully defeated, as junior counsel to Rachel Sleeman, an application for summary judgment in a deceit claim before Senior Master Fontaine on complex questions of limitation and what it means when a claimant "could have with reasonable diligence discovered" the fraud or concealment for the purposes of ss. 32(1)(a) and (b) of the Limitation Act 1980;
- committal proceedings in the High Court relating to allegations of forgery, led by Simon Mills;
- a deceit claim in the High Court worth c.£2.5million involving an international investment in a hotel development in South Asia (sole counsel);
- a four day shareholders dispute in the High Court over allegations of breach of contract and fiduciary duties (sole counsel);
- *Homes of England Ltd v Horsham Holdings Ltd & Ors* [2020] EWHC 1175 (Ch): one day hearing of an injunction attempting to restrain payment between companies until determination of two unfair prejudice petitions including the question of whether the application had to satisfy the test for a freezing injunction

(cited in the recent 7th Ed. of *Gee on Commercial Injunctions*).

Commercial/Banking litigation

Zachary has a broad commercial practice, having dealt with matters in the Commercial Court and Circuit Commercial Court, representing both individuals and large corporate entities. He has expertise in disputes relating to the sale of goods; the supply of goods and services; breach of contract; all matters involving interpretation of contracts; and the assignment of debts and other choses in action.

Zachary also has experience in disputes relating to the banking and finance sector including: international banking fraud, enforcement of loans, debentures, guarantees, indemnities, securities and mortgages (including matters with undue influence or misrepresentation elements); factoring, invoice discounting and trade finance (with all related issues under the law of assignment)

Recent work includes:

- *Consulting Concepts International v Consumer Protection Association (Saudi Arabia)*: Zachary will be junior counsel (led by Philip Coppel KC) in an appeal to the Court of Appeal from a decision of Jacobs J. in the Commercial Court. The case is in relation to a claim worth c.£50million which was struck out on an issue of limitation in relation to, *inter alia*, when a cause of action accrues under a contract for services. The Court of Appeal will hear the appeal in December 2022;
- *X v Y* (ongoing): advising on a cross-border fraud worth c.£90million;
- *Raja v McMillan* [2021] EWCA Civ 1103: an appeal to the Court of Appeal (before Underhill, Poppelwell and Nugee LLJ) in relation to a claim for unlawful means conspiracy. This is the first time the Court of Appeal has looked at the question of whether a director can conspire with his own 'one-man' company (i.e. a company of which he is sole director and majority shareholder) in a case of civil conspiracy. Zachary was led by Philip Coppel QC (recently referred to in *Civil Fraud, 1st Ed. First Supplement*);
- *X v Y*: Advising on questions of jurisdiction in a banking fraud estimated at c.$500million (as first junior counsel);
- *X v Y:* Advising on proposed cross-border fraud and restitution claims (with questions of banking law) estimated at c.$250million (as second junior counsel);
- *Arif v Sanger* CA-2022-000024: Successfully resisted, in the Court of Appeal, the Defendant's application for permission to bring a second appeal (and further application for permission to appeal a costs order) after producing a respondent's statement under CPR 52CPD para 19(1);
- *Circumference v Martin* [2021] EWHC 2691 (Ch): various applications following the grant of worldwide freezing injunctions and an unless order in England and a freezing order in Luxembourg (led by Simon Mills; instructed by Dentons UK and Middle East LLP). The case was also reported in Law360 which can be read here;
- *Circumference v Martin* [2021] EWHC 2389 (Ch): successfully obtained an application for an unless order in respect of breaches of a worldwide freezing order covering £5.44m (led by Simon Mills; instructed by Dentons UK and Middle East LLP). Zachary was also led by Simon Mills in the previous application for the worldwide freezing order;
- *Arif v Sanger* [2021] EWHC 3475 (QB): Zachary successfully resisted (led by Rachel Sleeman) an appeal before Bourne J. in relation to an application for summary judgment on the basis that a claim in deceit was statute barred under the Limitation Act 1980 and that the Claimant had no real prospect of successfully relying upon ss. 32(1)(a) (actions based upon the fraud) and 32(1)(b) (where any relevant fact has been deliberately concealed). In particular, the Appellant argued that because the Respondent was a director and therefore subject to the general duties of a director set out in ss.171-177 of the Companies Act 2006, the Respondent was legally obliged to make enquiries which would have uncovered the fraud. However, this argument failed because the relevant sections of the Companies Act 2006 and the Limitation Act 1980 have different purposes;
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questions of limitation and what it means when a claimant "could have with reasonable diligence discovered" the fraud or concealment for the purposes of ss. 32(1)(a) and (b) of the Limitation Act 1980;

- assisting, as sole English counsel, in a multi-jurisdictional trusts and share dispute in Cyprus worth c.€2million;
- acting in an arbitration relating to a corporate trustee's breach of fiduciary duty;
- a deceit claim in the High Court worth c.£2.5million involving an international investment in a hotel development in South Asia (sole counsel);
- committal proceedings in the High Court relating to allegations of forgery, led by Simon Mills;
- advising on the construction of a share purchase agreement in a dispute worth c.£750,000 (sole counsel);
- appearing for the 8th and 11th Respondents in *Homes of England Limited v Horsham Holdings Limited et Ors* (variation of an injunction before Ms, Pat Treacy sitting as a Judge of the Chancery Division);
- successfully resisting an application for Mareva relief and an access injunction relating to a commercial property and having the same marked totally without merit (before His Honour Judge Rawlings sitting as a Judge of the High Court, Queen's Bench Division);
- appearing in the Commercial Court in relation to a dispute over building materials (before Robin Dicker QC sitting as a Judge of the High Court);
- appearing for a claims purchaser in its appeal to a circuit judge against a major British airline on the question of whether assignment of a cause of action under Regulation (EC) No 261/2004 amounted to assignment of a bare cause of action, and therefore champertous.

Insolvency

Zachary is a recognised junior barrister for his insolvency work, having been ranked as a Rising Star in the Legal 500 2023 and being described as *"exactly the sort of modern barrister that you would like on your team"*.

Zachary has a busy insolvency practice working for IPs, individuals and companies in distress. His experience includes matters relating to: corporate insolvency, including misfeasance, fraudulent trading and wrongful trading; applications to extend administrations; applications restraining presentation or advertisement of a winding-up petition personal insolvency, including insolvency administration orders of a deceased's estate; transactions at an undervalue; rescission, annulment, and setting aside statutory demands.

Recent work includes:

- defending a s.212, alleged unlawful dividend and tracing action worth c.£2.7million (ongoing, sole counsel);
- acting for interested parties in an application to remove receivers over a company subject to a worldwide freezing order and ancillary issues of winding-up proceedings in the Isle of Man pursuant to the Isle of Man Companies Act 1931;
- working on s.426 proceedings for recognition of a liquidation in Jersey;
- advising on a multi-million pound s.212 & s.213 dispute (sole counsel, ongoing);
- *Re Laptev*: acting for the financial administrator of a bankrupt's estate, which encompassed debts of the equivalent of c.£40 million, successfully obtaining interim relief pursuant to Art 19 of the CBIR 2006, recognition pursuant to Art 15, and declarations at a final hearing as to the extent of the bankrupt's estate pursuant to article 213.25 of the Federal Law No. 127-FZ "On Insolvency (Bankruptcy)" in a CIS state (sole counsel, instructed by Gateley Legal);
- obtained a bankruptcy order against Crypto entrepreneur Mr. Datta (sole counsel, instructed by

Watson, Farley & Williams, referenced in the Daily Mirror here);

- drafting a High Court appeal regarding an application to set aside a statutory demand on the basis of a substantial dispute, issues regarding a limitation defence and questions of security (led by Rachel Sleeman);
- bankruptcy proceedings involving a debtor resident overseas, service out of the jurisdiction, COMI and the EU Regulation 2015/848 (sole counsel);
- an urgent application for an administration order to take retrospective effect per the jurisdiction set out in *Re Biomethane (Castle Eaton) Ltd* [2019] EWHC 3298 (Ch).

Company Law and Shareholders Disputes

Zachary often acts in or advises on cases involving disputes over companies and the rights and obligations of directors and shareholders, including shareholder disputes and shareholder activism such as unfair prejudice petitions; derivative claims; directors' duties and corporate governance; joint ventures; Companies Act advice; directors disqualification proceedings under the Company Directors Disqualification Act 1986**.**

Recent work includes:

- acting for the respondents to an alleged minority prejudice claim pursuant to s.180 of the Isle of Man Companies Act 2006 for a company alleged to be worth up to c.£150million (ongoing);
- acting for interested parties in an application to remove receivers over a company subject to a worldwide freezing order and ancillary issues of winding-up proceedings in the Isle of Man pursuant to the Isle of Man Companies Act 1931;
- working on s.426 proceedings for recognition of a liquidation in Jersey;
- assisting, as sole English counsel, in a multi-jurisdictional trusts and share dispute in Cyprus worth c.€2million;
- advising on an international share dispute worth c.$30million (led by Simon Mills);
- advising on the construction of a share purchase agreement in a dispute worth c.£750,000 (sole counsel);
- *Homes of England Ltd v Horsham Holdings Ltd & Ors* [2020] EWHC 1175 (Ch): a one day hearing of an injunction attempting to restrain payment between companies until the determination of two unfair prejudice petitions including the question of whether the application had to satisfy the test for a freezing injunction (cited in the recent 7th Ed. of *Gee on Commercial Injunctions*);
- a four day shareholders dispute in the Chancery Division over allegations of breach of contract and fiduciary duties (sole counsel);
- successfully obtained an urgent interim order per s.17 of the Company Directors Disqualification Act 1986 for an applicant seeking to be concerned or take part in the promotion formation or management in a business tech company (before Chief ICC Judge Briggs);
- instructed on a claim in the Chancery Division for a director requesting inspection of company documents pursuant to Companies Act 2006, Pt 15, Ch 2 and the common law (sole counsel);
- acting for a major international supplier of construction equipment in a joint venture dispute.

Offshore & CIS

Zachary has a strong international practice with a particular focus on (i) offshore jurisdictions such as the Isle of Man (where he also acts as a consultant to a Tier 1 firm of advocates) and the Channel Islands; and (ii) the CIS, and former CIS states. In this context he has experience in (i) commercial litigation; (ii) fraud claims; (iii)

insolvency and company law (iv) trusts disputes; and (v) all related issues of jurisdiction and private international law.

Recent work includes:

- acting for the respondents to an alleged minority prejudice claim pursuant to s.180 of the Isle of Man Companies Act 2006 for a company alleged to be worth up to c.£150million (ongoing);
- acting for interested parties in an application to remove receivers over a company subject to a worldwide freezing order and ancillary issues of winding-up proceedings in the Isle of Man pursuant to the Isle of Man Companies Act 1931;
- *Re Laptev*: acting for the financial administrator of a bankrupt's estate, which encompassed debts of the equivalent of c.£40 million, successfully obtaining interim relief pursuant to Art 19 of the CBIR 2006, recognition pursuant to Art 15, and declarations at a final hearing as to the extent of the bankrupt's estate pursuant to article 213.25 of the Federal Law No. 127-FZ "On Insolvency (Bankruptcy)" in a CIS state (sole counsel, instructed by Gateley Legal);
- *X v Y*: Advising on proposed cross-border fraud and restitution claims estimated at c.$250million (as second junior counsel);
- assisting, as sole English counsel, in a multi-jurisdictional trusts and share dispute in Cyprus worth c.€2million;
- working on s.426 proceedings for recognition of a liquidation in Jersey;
- *X v Y*: Acting in a professional negligence claim in relation to CIS litigants;
- *X v Y*: Advising on a corporate dispute between an English company and a CIS entity and related trust law issues.

Chancery: Commercial

Zachary has experience in chancery matters, usually within a commercial context, namely issues of trusts, breach of fiduciary duties, partnership disputes and charities.

Recent work includes:

- *Kaur v Malhi* [2022] EWHC 2219 (Ch) acting for the Executive Committee of the largest Gurdwara organisation outside of India and successfully resisting an interim injunction brought by individuals seeking to prevent the charity from holding an election of its executive committee and to force it to allow persons with limited leave to remain to become charity members in circumstances where the charity's constitution contained a mediation clause. Michael Green J. considered the binding nature of a mediation clause in a charitable constitution (which is one of the first recorder cases on this issue). Zachary was led by Satinder Gill.
- assisting, as sole English counsel, in a multi-jurisdictional trusts and share dispute in Cyprus worth c.€2million;
- *X v Y* (ongoing): ad hoc arbitration dealing with allegations of dishonest breach of a pension trust;
- Acting for the claimants in their action to wind up a partnership with questions of the interpretation of a partnership agreement and what constituted partnership property.

FURTHER INFO

Qualifications

BPTC, City University London, 2015.
GDL, City University London, 2014.
BA English Literature, University College London, First Class, 2013.

Scholarships and Prizes

- International professional and legal development grant programme (provided for by COMBAR and the Young Barristers' Committee) to speak at the Bar Council and Cyprus Bar Association's joint English-Cypriot Law Day 2019.
- BPTC Major Exhibition, Inner Temple, 2014.
- Duke of Edinburgh Entrance Award, Inner Temple, 2014.
- Second Prize – Senior Moot, City University London, 2014.
- GDL Major Scholarship, Inner Temple, 2013.
- John Oliver Hobbes Memorial Prize, University College London, 2013.

Publications

"Service, lies and NFTs: litigation and the blockchain." Zachary Kell and Callum Reid-Hutchings. Journal of International Banking and Financial Law. November 2022.

"Could've, would've, should've: commercial fraud and the reasonably diligent claimant." Rachel Sleeman and Zachary Kell. Journal of International Banking and Financial Law. April 2022.

"Sanctions on the Rise: The 6th Anti-Money Laundering Directive and the Post-Brexit Landscape." Emily Georgiades and Zachary Kell. Journal of International Banking and Financial Law. March 2021.

"Arkin uncapped: Chapelgate and the future of litigation funding." Zachary Kell and Joel Goschalk. Journal of International Banking and Financial Law. June 2020.

Keeping the shutters up: retail CVAs and property rights following Debenhams. R3 RECOVERY Magazine. Spring 2020.

"Opening Pandora's Box? PSD2, consumer control and combatting fraud." Emily Georgiades and Zachary Kell. Journal of International Banking and Financial Law. January 2020.

"Disclosure: co-operation in an adversarial system." Zachary Kell and Laura Sutton. Journal of International Banking and Financial Law. July 2019.

"Sit up and take notice! Partridge v Gupta." Ben Maltz and Zachary Kell. Property Litigation Association. September 2017.

Professional Memberships

- Chancery Bar Association (ChBA);
- Commercial Bar Association (COMBAR);
- R3 Association of Business Recovery Professionals (R3);
- Eurasian & CIS Legal Professionals' Forum.