Alexander Hill-Smith

Called: 1978

"Excellent all-round chancery barrister, who is very persuasive in court and not afraid of a fight."
Chancery: Traditional - Chambers UK Bar 2019

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Practice Overview

Alex is an experienced practitioner with a loyal client following. Alex is referred to by clients in Chambers UK Bar for his *"doggedness and commitment*" and the thoroughness of his research and preparation. He has been noted as *"willing to stick his neck out for clients and never shies away from harsh truths."*
Alex has worked in close collaboration with various firms of solicitors over many years, going the extra mile to achieve results. He is very practical with advice designed to solve problems for the client rather than cause unnecessary expense and risk.
His advocacy is based on the starting point of understanding what lines of argument will appeal to the Judge.
He has been in many reported cases in all categories of his practice.
Alex is the author of "Consumer Credit: Law and Practice 2015" now in its second edition.

Commercial Litigation

Alex has a general commercial practice that combines commercial contractual disputes with professional negligence.
Alex was listed in Chambers UK Bar 2016 as; *"He is sensible and gives clear commercial advice."*
Chambers UK Bar 2014 notes his methodical submissions and says *"he doesn't throw in drama or flamboyance - his advocacy just works."*
This year Alex is engaged in disputes arising out of a freezing order obtained by the Law Society involving consideration of the statutory trusts following an intervention under the Solicitors Act 1974 raising both tracing and the privilege against self-incrimination.
Alex is currently engaged in a jurisdictional dispute involving a loan subject to the Courts of Ireland in relation to a mortgage, subject to the Courts of England. He is also acting in substantial litigation concerning the Public Contracts Regulations 2006 relation to the conduct of a competitive tender in the health sector for the supply of major incident response vehicles.
He has appeared in a number of actions involving film finance schemes, including the class action involving 115 claimants, *Thomas v Capita*. He also regularly undertakes professional negligence claims against solicitors and financial services providers in particular in respect of film finance schemes
Alex is due to appear in the Court of Appeal this October in *Aldermore Bank v Rana* on the meaning and effect of completion in a re-mortgage transaction.
In the course of his practice Alex also has to deal with procedural questions. He appeared in *Chadwick v Burling* 2015 EWHC 1610 (Ch) on the application of the *Denton v White* principles to litigants in person. The court held

that ignorance of the importance of taking a particular step was not a good ground for relief. This is headed for the Court of Appeal as it has human rights implications.

Property

Alex has a particular interest in commercial landlord and tenant acting for many large commercial and retail organisations in this field including National Grid, Arcadia and Mothercare. This work encompasses all aspects of commercial property including dilapidations, lease renewals, access disputes and break clauses.
Alex is well used to working with surveyors and valuers as well as solicitors in connection with these disputes. For instance, he is currently engaged in disputes involving diminution in value of a sub-let property and refusal of consent to assign for reasons of good estate management.
He was involved in the leading case on expert's determination on the limits of the entitlement of the expert to determine his own jurisdiction *National Grid v M25 Group* [1999] 1 EGLR 65.
Alex also undertakes more traditional real property disputes involving rights of way, restrictive covenants, and enfranchisement. Alex acted for the property owner in the Court of Appeal decision in *Giles v Tarry* [2012] 3 EGLR 5 which explores the extent to which a right of way can be used to gain access to a plot lying outside the dominant tenement.
His analysis of private rights of parking was commended by Lord Scott in the House of Lords case of *Moncrieff v Jamieson* 2007 1 WLR 2620, who said *"The views I have expressed regarding the Ouster Principal owe a great deal to Alexander Hill-Smith's article "Rights of Parking and the Ouster Principal after Batchelor v Marlow" published in the Conveyancer May-June 2007 at 223. I am in agreement with the conclusions expressed by Mr Hill-Smith at 231 and 234 and must record my indebtedness to him."*
Recently his views were adopted in the context of fraud and land registration in the Chancery Division case of *Fitzwilliam v Richall Holdings* in [2013] 2 EGLR 13.

Cases

Name: Leven Holdings Ltd v Johnstone & Ors

Reference: [2018] EWHC 223 (Ch)

Date: 9th February 2018

Court: High Court

Facts:
Click here to view judgement.

Judge: HHJ Paul Matthews (sitting as a Judge of the High Court)

Comment:
Alex Hill-Smith (instructed by BrookStreet des Roches) for the Claimant

Practice Area: Property

Name: Singh v Tashie-Lewis and Okonye

Reference: [2018] EWHC 362 (Ch)

Date: 5th February 2018

Court: Chancery Division

Judge: Alison Foster QC (sitting as a deputy Judge of the Chancery Division)

Comment:
Click here to view judgement.
Alexander Hill-Smith (instructed by Grayfield Solicitors) for the appellant.

Practice Area: Insolvency

Name: Giles v Tarry

Reference: [2012] EWCA Civ 837

Date: 2nd January 2012

Court: Court of Appeal

Comment:
Alex took over this case in the Court of Appeal. This dispute involved the use of a right of way and the principles in the rule of Harris v Flower, the rule that says that a party cannot use a right of way granted for the benefit of one parcel of land to access a different parcel of land. The case received coverage in the national press. Alex succeeded in the Court of Appeal

Practice Area: Property

Name: Thomas and others v Capita Trustees Limited and other

Date: 2nd January 2012

Court: High Court

Comment:
Alex represented the Fifth and Sixth Defendant in this group action involving 124 individual Claimants, all investors in a number of film finance schemes. The total sums involved exceeded £30 million. The scheme involved the utilisation of certain tax reliefs introduced to promote the British film industry but the Claimants did not receive the level of tax relief they were expecting. The issues involved in the litigation involve claims in misrepresentation, breach of contract, knowing receipt of trust monies and alleged breaches of the Financial Services and Markets Act 2000. The litigation involved numerous hearings before the designated Judge, Mr Justice Vos, as well as a two day mediation.

Practice Area: Commercial Litigation

Name: Deir v Sheikh Fahad Al Athel and others

Reference: [2011] EWHC 354

Date: 3rd January 2011

Court: High Court

Comment:
This was a dispute between Mr Zak Deir and Sheikh Fahad Al Athel, a wealthy Saudi Arabian businessman who, among his various interests, is the owner of Lydd Airport in Kent. Mr Deir had been appointed as Managing Director of the airport. This was a claim for director's fees and for alleged breach of fidunciary duty and mismanagement of expenditure. There was a lengthy trial before Mr Justice Foskett in which the Judge found for the client.

Practice Area: Commercial Litigation

Name: Groveholt v Hughes

Reference: [2010] EWCA Civ 538

Date: 5th January 2010

Comment:
This case discussed the operation of a complex overage agreement. It looked at the question whether the factual matrix at a time of a variation to the agreement could be relevant to the construction of the main agreement.

Practice Area: Commercial Litigation

Name: Kama Aviation v Deir

Reference: [2010] EWHC 1276

Date: 5th January 2010

Court: High Court

Comment:
The case concerned the construction of a written chartering agreement for a private aircraft. The Court applied the principle that negotiations are excluded for the purposes of the exercise of construction and that the court does not look at subsequent events for this purpose either.

Practice Area: Commercial Litigation

Name: Hildron Finance v Sunley Holdings

Reference: [2010] 40 EG 104

Date: 2nd January 2010

Court: High Court

Comment:
This case involved the construction of an overage agreement which entitled the seller to a share of the proceeds of sale in the event that a porter's flat was subject to a subsequent sale. The question was how the overage agreement should operate on disposal of the porter's flat following collective enfranchisement.

Practice Area: Property

Name: Environmental Recycling Technologies v Daley

Reference: [2009] EWCA Civ 612

Date: 2nd January 2009

Court: Court of Appeal

Comment:
This was a case concerning the extent of the obligations of a senior manager to account for monies received in Kyrgystan. The Court recognised the duty of an agent to document transactions but took into account the general business environment in Kyrgystan.

Practice Area: Company

Name: Lovett v Carson Country Homes Ltd

Reference: [2009] 2 BCLC 196

Date: 2nd January 2009

Court: High Court

Comment:
This case concerned the validity of the appointment of a receiver following the grant of a mortgage and company debenture containing the forged signature of a director of the company. The court considered the effect of section 44 Companies Act 2006 and the applicability of estoppel to a forged document.

Practice Area: Commercial Litigation

Name: Battlebridge Group Limited and another v Millar

Date: 31st January 2008

Court: High Court

Practice Area: Company

Name: Oxford Legal Group v Sibbasbridge Services

Reference: [2008] BCC 558

Date: 2nd January 2008

Court: Court of Appeal

Comment:
The case looked at the circumstances in which a company could withhold company documents from a director and when a summary remedy could be refused.

Practice Area: Commercial Litigation

Name: Fenton V Holmes

Reference: [2007] All ER (D) 12 (Jun)

Date: 6th June 2007

Court: High Court

Comment:
The Claimant had already conducted successful litigation against the Defendant, pursuant to a conditional fee agreement. Although the majority of documents relating to the CFA had been properly completed, a letter comprising additional terms had not been signed by C. Accordingly, the CFA as a whole did not comply with reg 3(2)(b) of the Conditional Fee Agreements Regulations 2002 SI 2000/692, in relation to the risk assessment and dependent uplift fee, and thus the CFA was unenforceable. This was an appeal against that finding on the grounds that the breaches were not substantially material and thus the CFA should stand.

Held:
The purpose of reg 3(2)(b) of the Conditional Fee Agreements Regulations 2002 SI 2000/692 was to provide the court with important evidence to assist in the assessment of a reasonable success fee under the individual CFA. That the information was missing from the CFA had a potentially substantial adverse effect on the administration of justice. The requirement that both parties sign all parts of the CFA was to ensure consumer protection and the proper administration of justice. As the CFA also failed to comply with reg 5, it was unenforceable. Appeal dismissed.

Practice Area: Commercial Litigation

Name: St Martin's Property Investments Ltd v Cable & Wireless UK Plc

Reference: [2007] All ER (D) 68 (Apr), LTL 13/4/2007

Date: 4th April 2007

Court: High Court

Comment:
This was a Part 8 claim brought by the landlord and concerning the true construction of a rent review clause which stipulated how the open market rent was to be calculated. The original clause stated that the open market

rent was to be determined on the assumption that 'the demised premises comprise High Class Professional or Commercial Offices with a net internal area of 124,019 square feet'. This clause was subsequently varied, to include the assumption that the premises were either such offices, or a computer centre. The landlord submitted that the rent should be determined on the basis of hypothetical buildings meeting the stipulations of the clause, the defendant submitted that the rent should be determined on the basis of the actual premises, on the assumption that they were to be used as expressed in the lease.

Held:
That the true construction of the clause was as submitted by the landlord, and thus what was to be valued was a hypothetical building in accordance with the stipulations. The variation of the clause did not affect its true meaning.
On its proper construction, a rent review clause in a lease of a computer data centre required that the open market rent of the building was to be assessed on the assumption that the demised premises comprised high class commercial offices.

Practice Area: Commercial Litigation

Name: 3DM (3DMA) pte Ltd v 3DM 3DM Worldwide Plc

Reference: [2006] All ER (D) 57 (Oct), LTL 2/11/2006

Date: 5th October 2006

Court: High Court

Comment:
The claimant (C) alleged that a contract had been made between itself and the defendants (D), and brought an action seeking payment of a retainer allegedly due. C submitted that it had signed a contract brought to it by a business consultant who assisted the chairman /director of D, and had done so on the understanding that it created an immediate binding contract between C and D. D submitted that no such contract had been made, that it was D's understanding that the agreement would only become binding once signed by both parties, and that the subsequent correspondence between the two parties evidenced that no contract had been made.

Held:
C had not proved that there was a binding contract between itself and D. The business consultant who had brought the agreement to C was neither an employee nor a director of D, and was not authorised to act as an agent on D's behalf. It was also apparent from subsequent correspondence that the agreement had not taken effect, and would not do so until further matters had been resolved.
The claimant had failed to show that it had entered into a legally binding contract with the defendant.

Practice Area: Commercial Litigation

Name: Gastronome (UK) Ltd v Anglo Dutch Meats (UK) Ltd

Reference: [2006] All ER (D) 377 (Jul), LTL 26/7/2006

Date: 26th July 2006

Court: Court of Appeal

Comment:
The appellant (A), a wholesale food supplier, was part of a group of companies. It was also the 76% shareholder in another company, (X). The respondent (R) was a subsidiary of a French company, as was another company (C), both of whom were also in the food supply business. In 2001 X approached R to arrange for R to supply products for sale in the UK. R first required a guarantee agreement to ensure its invoices would be paid. The guarantee agreement, addressed to R, and on A's headed paper, was sent to C to guarantee any amounts owed by X. The guarantee was renewed two years later. R fulfilled all X's orders, but the following year X went into liquidation, owing R almost £185,000. R sought to enforce the guarantee against A for the amount owed. A appealed on the basis that the beneficiary of the guarantee agreement was C, not R, an argument rejected by the judge at first instance.

Held:
The guarantee was meant to benefit R. The address on the agreement was a mistake, and it was clear from the dealings of the parties that A was to be liable for X's debt to R.
A court on the construction of a guarantee. A subsidiary company not named in the guarantee was nevertheless held entitled to enforce it.

Practice Area: Commercial Litigation

Name: Witney Golf Club Ltd v Parker and another

Reference: [2006] All ER (D) 174 (Apr), LTL 25/4/2006

Date: 1st April 2006

Court: High Court

Comment:
The claimant (C) was a tenant of the defendants (D). In 1996, after obtaining planning permission for the land it rented, C entered into negotiations with D to vary the terms of the lease. The variation deed contained a provision for 'additional rent', which was to be calculated as a percentage of C's gross business profits. The deed was drafted by D's solicitor, who amended the formula for the additional rent calculation by substituting a simpler calculation of net profits. D's solicitor confirmed to C that D had approved the deed, subject to two minor alterations. The deed was subsequently executed, with the inclusion of the simpler formula. C sought to rely on the deed of variation, and applied for a declaration that the rent was to be calculated accordingly. D counterclaimed to have the deed rectified, contending that C had wilfully shut its eyes to the mistake or failed to make proper inquiries, citing that the simpler formula in the deed was beneficial to them.
Held:
Although C had been aware that the simpler formula may be more beneficial for them, the variation deed had been provided by D's solicitors, who had confirmed that it was agreed. To impose a burden on C to make further checks regarding the rent calculation formula would be unrealistic. There was no basis on which to find that C had wilfully closed its eyes or wilfully failed to make inquiries.
A lessee had not had actual knowledge of any mistake on the lessors' part in respect of a rent provision in a deed of variation, so that the lessors were not entitled to have the deed rectified.

Practice Area: Property

Name: Hughes v Groveholt Ltd

Reference: [2005] All ER (D) 246 (Jul), [2005] 2 BCLC 421, LTL 18/7/2005

Date: 28th July 2005

Court: Court of Appeal

Comment:
Under an agreement for the sale of land, the vendor was only entitled to an additional purchase consideration from the purchaser in respect of planning consents after taking full account of the preparatory costs of obtaining such consents.

Practice Area: Property

Name: Taefi v Jeffrey Green Russell (a firm)

Reference: [2005] All ER (D) 340 (Jul), LTL 25/7/2005

Date: 25th July 2005

Court: Court of Appeal

Comment:
The trial judge had been entitled to conclude on the evidence and his assessment of the credibility of the witnesses that there had been no breach of duty by a firm of solicitors in respect of the advice given to their client in responding to a claim for unpaid monies.

Practice Area: Commercial Litigation

Articles

Date	Title	Contributors
29th June 2015	Assessment of interim rent Published In *New Square Chambers*	Alexander Hill-Smith
8th May 2015	Money, money, money... Published In *New Law Journal issue 7651 on 8th May 2015*	Alexander Hill-Smith
30th October 2010	Overage agreements and unforeseen contingencies Published In *New Square Chambers*	Alexander Hill-Smith

Date	Title	Contributors

Publications

Date	Title	Contributors
31st January 2015	Consumer Credit: Law & Practice 2015 Routledge	Alexander Hill-Smith