



Thomas Elias

Year of Call: 2008

"Very bright, clear-thinking and tactically astute."

The Legal 500

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Practice Overview

Thomas has a wide-ranging commercial chancery practice with a particular emphasis on business disputes. These frequently involve company law, breach of directors' duties, joint ventures, partnerships, insolvency and intellectual property. He has been instructed in several High Court trials as sole counsel (including an 11 day trial of an unfair prejudice petition in the Chancery Division) and has also been instructed as junior counsel in high value civil fraud and company cases (including in the Supreme Court and Court of Appeal). In intellectual property matters Thomas is instructed in pure I.P. disputes and in commercial cases with an I.P. element. Thomas also regularly advises and acts in relation to off-shore matters and entities, including those in Jersey, Mauritius, The Bahamas, Turks & Caicos and the BVI.

Areas of Expertise

Company

Thomas has considerable experience in Company law matters. He has recently concluded an 11 day unfair prejudice trial in the High Court in the matter of *RE AMT Coffee Limited* (sole instruction by Forsters), and is acting for both petitioners and respondents in other, ongoing unfair prejudice petitions. Other current company instructions include acting for liquidators in claims against former directors (instructed by Fladgate).

Notable matters include:

Awan v Patel [2017] EWHC 1951 (Ch): Acted for the successful defendants in a 5 day trial in the Chancery Division (leading Sophia Hurst) in a matter involving interlocking issues of company and partnership law (instructed by DLS Law)

Re Galasys plc [2016] JRC 188: A multi-jurisdictional dispute over control of a (formerly) AIM-listed company. Instructed in relation to the proceedings in Jersey (by Collas Crill).

Prince Abdulaziz v Apex Global Management [2014] UKSC 64, [2014] 1 W.L.R. 4495. High-profile and wide-ranging litigation regarding unfair prejudice petitions. Appeared (with Daniel Lightman, now Q.C.) for the successful respondents in the Supreme Court in October 2014.

Sukhoruchkin v van Bekestein: a dispute arising out of the management and subsequent liquidation of an off-shore investment fund, in which permission was sought by shareholders in a holding company to bring a double derivative claim on behalf of the subsidiary. A freezing order was successfully set-aside at first instance but was reinstated by the Court of Appeal [2014] EWCA Civ 399 (instructed by Mishcon de Reya).

Abouraya v Sigmund [2014] EWHC 277 (Ch); [2015] B.C.C. 503: a claim to bring proceedings by way of double-derivative claim on behalf of a company against a director for breach of fiduciary and duty (instructed by Asserson Law Offices).

Intellectual Property

Thomas has appeared in the Intellectual Property Enterprise Court, the High Court and the European Court in intellectual property disputes relating to trade marks, registered and unregistered designs, passing off and copyright. He has also appeared in the Trade Marks Registry and before the Appointed Person. As well as dealing with pure I.P. matters, Thomas is instructed in commercial cases which have an intellectual property element. He also contributed to the CITMA publication "Contentious Trade Mark Registry Proceedings" by Michael Edenborough Q.C. (published 2018)

Significant cases include:

Pelikan v EUIPO (NBA Properties Inc. intervening) T-112/17. Sole instruction for the Intervener in an appeal before the General Court in May 2018. (instructed by Stratagem IPM).

Glencairn v Dartington Crystal. Ongoing instruction acting for Dartington in a registered design case about a whisky glass. Successfully resisted an interim injunction in March 2018. Matter now proceeding to trial (instructed by Virtuoso Legal).

Advising on copyright enforcement in Jersey and the Isle of Man in relation to sports broadcasts (2018).

Advising on copyright and database right in relation to sports broadcasts in Mauritius (2017).

M.I. Industries, Inc. v EUIPO (Natural Instinct Ltd intervening) T-30/16. Solely instructed in a successful appeal to the General Court in a trade mark matter regarding proof of use (instructed by Lucas & Co).

Gama Healthcare v Pal International [2016] EWHC 75 (IPEC). Successfully acted for the defendant in a claim for passing off based on packaging of medical wipes (with Roger Wyand Q.C.) (instructed by Spearing Waite).

The Ukulele Orchestra of Great Britain v Clausen & another [2015] E.T.M.R. 40, [2015] EWHC 1772 (IPEC). Acted for the defendants in a claim for passing off, trade mark infringement and infringement of copyright in dramatic works, and successfully invalidated the claimant's Community trade mark. Also resisted an early application for an interim injunction [2014] EWHC 3789 (IPEC) (instructed by Fladgate LLP).

Moroccanoil Israel Ltd v Aldi Stores [2014] EWHC 1686 (IPEC) - successfully defended Aldi in a passing-off action based on packaging "get-up" (with Michael Edenborough Q.C.) (instructed by Freeths).

Aveda Corp v Dabur India Ltd [2013] E.T.M.R. 33 – appeal to the High Court from the Trade Mark Registry

involving the issue of the correct analysis of composite trade marks (instructed by Cresco Legal).

Kavaklidere-Europe v OHIM [2012] E.T.M.R. 45 - Acted with Michael Edenborough Q.C. in proceedings in the General Court of the European Union on behalf of Yakult Honsha Kabushiki Kaisha successfully opposing the registration as a Community Trade Mark of a word mark similar to the client's mark "YAKULT".

Smart Technologies v OHIM [2012] E.T.M.R. 49 - Appeared with Michael Edenborough Q.C. on an appeal to the Court of Justice of the European Union on a trade mark matter regarding the registrability of slogans as Community Trade Marks.

Pass J Holdings Ltd v Spencer, Trade Marks Registry (Appointed Person), [2012] R.P.C. 16 Appeal, inter alia, on the basis that the original decision was vitiated by serious errors arising from the Hearing Officer cutting and pasting from an unrelated earlier decision.

Harrison v Harrison [2010] FSR 25, 604, one of few reported cases on the moral rights of derogatory treatment and false attribution.

Evans (t/a Firecraft) v Focal Point Fires Plc [2010] E.T.M.R. 29; [2010] R.P.C. 15, summary judgment on a passing off claim based on an estoppel arising from an invalidation decision of the trade mark Registry.

Commercial Litigation

Thomas frequently acts in Commercial Chancery disputes involving joint ventures, partnerships, companies and allegations of breach of duty.

Recent matters include:

Kiwak v Reiner [2017] EWHC 2018 (Ch). Acted for claimants in a 5 day High Court trial regarding a joint venture/partnership dispute in relation to development property. Appeal to Court of Appeal set down for January 2019 (sole instruction by Asserson Law Offices).

Monterrey v Fraser. 6 day trial set down for autumn 2018 regarding allegations of breach of duty, breach of trust and constructive trusts. Acting for a Mauritius trust company (sole instruction by Withers).

Woodfine v Russo. Partnership dispute regarding development properties (instructed by DLS Law). Set down for a 3 day High Court trial in autumn 2018.

Lotigol v Christoforou. Acted for a claimant property investor seeking to recover a secret profit obtained by his agent in breach of duty in engineering back-to-back property sales. Involved claims for breach of duty, deceit and knowing receipt. Now settled (instructed by Elephant).

Ongoing instruction relating to a claim to rectify the land register in the Turks and Caicos islands (instructed by Karam Missick).

Erith Holdings Limited & Ors v Ronald William Murphy [2017] EWHC 1364 (TCC): successfully acted for the defendant in a trial in the Technology & Construction Court, resisting claims for monies said to be due under a contract of indemnity.

Office Depot Inc v Office Depot (Israel) (2013): instructed as sole counsel in a dispute in the High Court regarding monies due under a contract of sale of a subsidiary company in Israel, with counterclaims of misrepresentation, involving jurisdiction issues in light of related proceedings in Israel (instructed by Meyer Brown)

Water's Edge v Laing (2013): several interlocking claims in the Bahamas brought in relation to an alleged property joint venture.

Civil Fraud

Notable cases include:

Lotigol v Christoforou: Acted for a claimant property investor seeking to recover a secret profit obtained by his agent in breach of duty in engineering back-to-back property sales. Involved claims for breach of duty, deceit and knowing receipt. Now settled (instructed by Olephant).

Sukhoruchkin v van Bekestein: a multi-party, multi-jurisdictional dispute arising out of the management and subsequent liquidation of an off-shore investment fund. A freezing order was successfully set-aside at first instance but was reinstated by the Court of Appeal [2014] EWCA Civ 399 (instructed by Mishcon de Reya).

Monde v LeeLanes LLP (2013): a dispute arising out of agreements to provide a power station in Iraq, involving claims for breach of contract and unlawful means conspiracy and allegations of bribery and illegality (instructed by Withers).

Viken v Tiberius Investments & Capital (2012): claims regarding alleged misuse of investment monies in an off-shore investment fund (instructed by Peters & Peters)

Architectural Association v Livett (2011): obtained a freezing injunction on behalf of claimant charity against its former finance director in relation to claims of equipment leasing fraud (instructed by Peters & Peters)

Cherney v Neuman [2011] EWHC 2156 (Ch): 12 day trial of claims for breach of fiduciary duty and negligence against a firm of solicitors (with Hugh Norbury, now Q.C.) (instructed by Fladgate).

Insolvency

Recent instructions include advising liquidators on potential claims against former directors for breach of duty, acting for an on-line trading platform in high value bankruptcy proceedings, and advising in directors disqualification proceedings.

Notable matters include:

Re Crosscatle (in liquidations): Acted for liquidators in a dispute over the valuation of goodwill attaching to a lease (unreported). See article in Journal of International Banking and Financial Law, Vol. 31 no. 7 (2016)).

Tiberius Investments & Capital Limited v Viken Securities Inc. BVIHC (COM) 57 OF 2012: instructed for a hearing in the BVI Commercial Court to set aside a Statutory Demand (instructed by Peters & Peters).

Pace Europe Ltd v Dunham [2012] EWHC 852 (Ch); [2012] BPIR 836: an appeal to the High Court against an order setting aside a statutory demand as it was based on an order of a United States court for multiple damages (instructed by Premier Solicitors).

International and Offshore

Thomas has acted in contentious trust disputes involving trusts in Jersey and Mauritius, was instructed in connection with the Jersey element of a multi-jurisdictional company law dispute, and continues to be instructed in connection with numerous cases in The Bahamas. Thomas was called to the bar of the Eastern Caribbean Supreme Court in 2013 and has appeared in the BVI commercial court.

Current matters include:

Monterrey v Fraser. 6 day trial set down for autumn 2018 regarding allegations of breach of duty, breach of trust and constructive trusts. Acting for Mauritius trust company (sole instruction by Withers).

Ongoing instruction relating to a claim to rectify the land register in the Turks and Caicos islands.

Continues to advise in relation to several judicial review matters in The Bahamas (instructed by Callenders & Co).

Advice on copyright enforcement in Jersey and the Isle of Man in relation to sports broadcasts (2018).

Advice on an insurance dispute in the Turks and Caicos islands (instructed by Karam Missick) (2018).

Advice on copyright and database right in relation to sports broadcasts in Mauritius (2017).

Instructed in several cases, both private law and judicial review, regarding the meaning and effect of the Hawksbill Creek Agreement, under which Freeport, Grand Bahama, was established (instructed by Callenders & Co).

Re Galasys plc: [2016] JRC 188: A multi-jurisdictional dispute over control of a (formely) AIM-listed company. Instructed in relation to the proceedings in Jersey by (Collas Crill).

Acted for a Jersey Trustee in relation to allegations of negligence in managing an investment fund (with Dakis Hagen, now Q.C.) (instructed by Voisin).

Tiberius Investments & Capital Limited v Viken Securities Inc. BVIHC (COM) 57 OF 2012: hearing in the BVI Commercial Court; an insolvency issue in the context of a multi-million dollar hedge fund dispute (instructed by Peters & Peters).

Partnership and LLP

Private Client Trusts and Probate

Administrative and Public Law

Insurance and Reinsurance

Professional Negligence

Recommendations

Intellectual Property (*Legal 500*)

Company and Partnership (*Legal 500*)

Company (*Chambers and Partners*)

Quotes

"Very bright, clear-thinking and tactically astute." (The Legal 500, 2021)

"His other areas of Chancery expertise add materially to the breadth and depth of the advice that he gives on IP issues." (The Legal 500, 2021)

"He has excellent judgement and tactical sense, well beyond what would be expected from his level of call." (The Legal 500, 2020)

"An excellent barrister with an eagle eye for the detail." (The Legal 500, 2020)

"He is really good and strategically aware." (Chambers & Partners, 2017)

"He's exceptionally bright, good on the detail and won't miss a point" (Chambers and Partners 2016)

"He is so persuasive in writing, he can fashion something out of nothing." (Chambers and Partners 2016)

In the Press

Mentioned in '[M&S settles lawsuit with Aldi over Colin the Caterpillar cake](#)' Retail Gazette

Education & Qualifications

Kings College, Cambridge: BA (English) Double first class honours; MPhil; PhD (16th century music and literature)

City University: GDL (distinction)

Inns of Court School of Law: BVC (outstanding)

Scarman Scholarship (1st overall in BVC at ICSL)

OUP prize for advocacy and procedure in BVC

Inner Temple Major Scholarship

ICSL Scholarship

Appointments

Called to the Bar of the Eastern Caribbean Supreme Court (BVI) (2013)
