



## Alexander Kingston-Splatt

Call: 2017

### Barrister

#### CONTACT

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Email  
akingston-  
splatt@radcliffechambers.com

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Email Clerk  
clerks@radcliffechambers.com

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Telephone

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#### ADDRESS

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11 New Square  
Lincoln's Inn  
London WC2A 3QB

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DX: 319 London  
Telephone: 020 7831 0081  
Fax: +44 (0)20 7405 2560

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**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.

In the 2024 edition of *Legal 500*, Alex has been ranked as a Rising Star for Insolvency. Before coming to the Bar, Alex was admitted as a solicitor in 2012, following which 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.

#### COMMERCIAL, BANKING & FINANCE

Alex acts for clients across various industries, including light and heavy manufacturing, natural resources and energy production, information technology, aerospace, retail, real estate and construction in the resolution of disputes through litigation, arbitration and other forms of ADR. 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 urgent interim orders in support of commercial claims, such as freezing and search orders and *Norwich Pharmacal* relief.

Recent and notable work includes:

- *X v Y* [2024] (High Court, Business and Property Courts) (Mr Justice Rajah). Alex successfully obtained a doorstep delivery up order, together with related prohibitory and non-disclosure orders, on an application without notice against former senior employees for having taken the applicant's confidential information, potentially in conspiracy with their new employer. Led by Stuart Benzie. Instructed by Gateley plc.
- *X v Y* [2024] (Circuit Commercial Court) (HHJ Pelling KC). Alex obtained *Norwich Pharmacal* relief and related non-disclosure and anonymity orders against a commercial distributor in support of the investigation of a

suspected commercial fraud and breach of a supply agreement. Led by Simon Mills. Instructed by B P Collins LLP.

- *X v Y* [Ongoing]. Alex is instructed in an LCIA arbitration concerning claims for unpaid sums by way of debt and/or damages due under a contract between commercial parties in the hospitality industry.
- *Chris Allsop Properties Ltd v Unbrako Pre-Cast Concrete Ltd* [2024] (High Court, King's Bench Division) (Mr Richard Hermer KC). Alex successfully obtained permission shortly prior to trial for the claimant to rely upon a jointly authored expert report (where permission for one expert per party had previously been granted) in circumstances where the original expert had unexpectedly become ill. Alex further resisted the defendant's strike out/summary judgment application. Led by Shantanu Majumdar KC. Instructed by Freeths LLP.
- *Praetura Asset Finance Ltd v Vitale and Ors* [2023] EWHC 889 (Comm) (Circuit Commercial Court) (HHJ Worster). Alex acted for the successful claimant in arguing that, on its proper construction, the claimant's guarantee took effect as an indemnity, meaning that the claimant had no duty to mitigate its losses when selling the asset which was the subject of the underlying hire-purchase agreement. Even if it had been subject to such a duty, the claimant had in any event discharged it by disposing of the asset for the approximate market valuation given by the single joint expert. Instructed by Spratt Endicott.
- *Marsh & Parsons v Jagdev* [2023] (County Court at Central London and Court of Appeal). Alex acted for the claimant at first instance, on the first appeal, and in successfully resisting permission for a second appeal. The defendant maintained that he was entitled to repayment of sums paid under a contract on the grounds of unjust enrichment, the basis being the claimant's alleged subsequent repudiatory breach of that contract. In rejecting permission for a second appeal, the Court of Appeal (Nugee LJ) agreed with Alex's analysis set out in *Marsh & Parsons*' PD 52C para 19 statement. Instructed by Harwood & Co.
- *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, Business and Property List) (HHJ Dight CBE). Alex 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. The court agreed with Alex's submissions and entered judgment for the claimant.
- *Asset Advantage v Karpal* [2021] (County Court at Central London, Business and Property List) (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.

- *X v Y* [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.
- Alex was instructed for the Claimants in a multi-party arbitration concerning the construction of an offshore drilling platform.
- Alex acted for the Claimant in an arbitration concerning the allegedly defective manufacture of mining equipment.

## 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.

Alex was instructed as junior counsel by the administrators in the widely reported Arena litigation, a series of cases concerning the largest hire-purchase fraud ever perpetrated in the UK, with losses exceeding £280m.

Recent and notable work includes:

- *X v Y* [2024] (High Court, Business and Property Courts) (Mr Justice Rajah). Alex successfully obtained a doorstep delivery up order, together with related prohibitory and non-disclosure orders, on an application without notice against former senior employees for having taken the applicant's confidential information, potentially in conspiracy with their new employer. Led by Stuart Benzie. Instructed by Gateley plc.
- *X v Y* [2024] (Circuit Commercial Court) (HHJ Pelling KC). Alex obtained *Norwich Pharmacal* relief and related non-disclosure and anonymity orders against a commercial distributor in support of the investigation of a suspected commercial fraud and breach of a supply agreement. Led by Simon Mills. Instructed by B P Collins LLP.
- *X v Y* [2024] (High Court, Business and Property Courts) (ongoing). Alex is presently acting for the assignee of various causes of action from a liquidator in the pursuit of monetary orders of c. €49m against the company's former directors for having negligently and in breach of duty permitted a fraud involving Bitcoin to be perpetrated on the company. Led by James Morgan KC.
- *Various* (ongoing). Alex is acting for a number of commercial energy suppliers in claims brought in the High Court and County Court by commercial occupiers in various industries seeking to recoup alleged half-secret commissions paid to brokers, on the basis that the claimants allegedly did not know that commissions would be payable to those brokers. Instructed by Freeths LLP.
- *X v Y* (ongoing). Alex is currently acting for a fiduciary accused of earning secret commissions in the context of their previous employment relationship.
- *X v Y* [2023]. Alex acted for the claimant in a claim in unlawful means conspiracy and inducing breach of contract against the creditor of a company which had entered into an invoice discounting agreement, in circumstances where the creditor and the company had conspired to divert the payment of multiple invoices from the claimant to the (insolvent) company's directors. Case settled. Instructed by Bermans.
- *Arena Television Ltd (in admin.) and Ors v Yeowart & Hopkinson* [2022] EWHC 918 (Ch) (Mr Justice Green). 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.
- *X v Y* [2021] (High Court, Business and Property Courts). Alex acted 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.
- *X v Y* [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. Case settled pre-action. Instructed by Francis Wilks & Jones.

## **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). He frequently appears before ICC Judges, often in the urgent Interim List.

In the 2024 edition of *Legal 500*, Alex has been ranked as a Rising Star for Insolvency.

Recent and notable work includes:

- *X v Y*[2024] (High Court, Business and Property Courts) (ongoing). Alex is presently acting for the assignee of various causes of action from a liquidator in the pursuit of monetary orders of c. €49m against the company's former directors for having negligently and in breach of duty permitted a fraud involving Bitcoin to be perpetrated on the company. Led by James Morgan KC.
- *Gohil v United Schools Trust* [2024] (High Court, Business and Property Courts) (HHJ Paul Matthews). Alex acted for the respondent in an appeal from a decision made on paper under r.10.5(1) of the Insolvency (England and Wales) Rules 2016 by which the District Judge had summarily dismissed an application to set aside statutory demands served by the respondent based upon judgment debts. The court agreed with Alex's submissions that it should not interfere with the exercise of the judge's discretion, and that the appeal was in substance pointless, because the

appellant had made an application to set aside the judgments which had yet to be determined. Instructed by Harwood & Co.

- *Bharania v Ovo Energy Limited* [2023] EWHC 3363 (Ch) (ICC Judge Prentis). Alex acted for the respondent which had previously obtained an injunction to restrain presentation of a petition against it on the basis of a disputed statutory demand. The respondent had offered to accept an undertaking by the applicant, which offer had been refused. The form of undertaking, which in some respects went beyond what the court was empowered to order, was not put before the judge who granted the injunction. The applicant sought to set aside the order. The court agreed with Alex's submissions that the fact that the judge had not been shown the form of undertaking offered no basis to set aside the injunction. Instructed by Clarke Willmott.
- *Manolete Partners plc v Jones and Jones* [2023] EWHC 236 (Ch) (ICC Judge Barber). Mr and Mrs Jones sought a stay of Manolete's claim pending the determination of their application seeking to challenge the validity of the administrators of the company (from whom Manolete had taken an assignment of its causes of action). The application was refused because, among other reasons, even if the validity application had been successful, it was possible that the court may grant a retrospective administration order, and Manolete is a well-resourced concern able to meet any costs order. Instructed by Francis Wilks & Jones.
- *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. Led by Simon Mills. Instructed by B P Collins LLP.

## **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 and 'pure' company law. This includes advising in relation to issues concerning shareholdings, the appointment and removal of directors and the interpretation and enforcement of articles of association.

His recent and notable work includes:

- *X v Y* [2024] (ongoing). Alex is presently advising a member of a company which runs an estate agency in respect of a potential unfair prejudice petition.
- *Re a Company* [2024](ongoing). Alex is presently acting for a company in seeking to rectify an alleged buyback of its own shares which was void by reason of having called for the deferred payment of consideration and for such consideration having been paid at a time when the company had no distributable profits.
- *X v Y* [2023] (County Court at Central London, Business and Property List) (HHJ Raeside KC). Alex acted for the respondent to an application for permission to continue a derivative action. Permission to continue was refused and so the case dismissed. Instructed by Samuel Phillips.
- *X v Y* [2022]. Alex acted for a director of a company which operates a highly 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). Alex acted 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, Business and Property List). 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.
- *X v Y* [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.

## **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.

His recent and notable work includes:

- *X v Y* [2024] (ongoing). Alex is acting for a company in a claim against its former solicitors for the negligent preparation and advice in connection with a void share buyback agreement.
- *X v Y* [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.
- *X v Y* [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.
- *X v Y* [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.

- *X v Y* [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.

### **MEMBERSHIPS**

- COMBAR
- R3
- The Law Society

### **QUALIFICATIONS**

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

### **AWARDS**

- Kent Law School Prize for Special Achievement