



Simon Mills

Call: 1994

Barrister

CONTACT

Email
smills@radcliffechambers.com

Email Clerk
clerks@radcliffechambers.com

Telephone

ADDRESS

11 New Square
Lincoln's Inn
London WC2A 3QB

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

Simon Mills is an experienced commercial barrister specialising in commercial litigation and arbitration, in particular civil fraud and asset tracing, banking & finance litigation, and contentious insolvency.

Simon is known for his user-friendly service and practical approach to helping his clients who are mainly financial institutions and banks, companies and insolvency practitioners.

Simon has long been recognised as a leading barrister in **Commercial Dispute Resolution** in Chambers and Partners, and Chambers Global, and is recommended in **Civil Fraud, Commercial Litigation, and Banking and Finance** in Legal 500. Directory quotes comment that he is *"A formidable advocate and a must-have part of our litigation arsenal", "Brilliant at devising strategies and commercial solutions to the most complex issues", "Simon Mills is a master tactician who is as good on his feet as he is on paper", "Readily available, irrespective of time zones and will work around clients to include after-hour conferences – goes above and beyond."*

Simon is an established author on a wide-range of topics on the law of business, insolvency and finance, including **"Salinger on Factoring"** (2020) and **"Goode on Proprietary Rights and Insolvency in Sales Transactions"** (2010). A new updated edition of Salinger is due to be published in 2024.

Simon is also regularly invited to speak to industry and potential clients at high profile conferences on commercial law and fraud. On 28 June 2024 he will be speaking on the FIRE Crypto webinar on **"Seizing and Selling Crypto assets in Civil and Commercial Disputes"**.

COMMERCIAL

Simon has extensive experience of multi-million pound disputes in both litigation and arbitration proceedings and often leads a team involving clients, solicitors, junior counsel and experts. He takes a commercially-driven approach tailored to the practical needs of his clients in all aspects of commercial dispute resolution. He has been described as a "master strategist" and a "master tactician who runs rings around his opponents".

Simon also acts as an expert on aspects of commercial law in international cases on various topics, including the effect of VAT and the characterisation of invoice discounting agreements (Ireland), and upon proprietary rights and insolvency in sale of goods transactions (Russia).

Recent work includes:

- **Re: A1 Comms Ltd** (in admin.) [2024] (ongoing)
Subject: Security assignment; non-assignment clause.
Summary: Listed for 3-day trial in July 2024 to determine whether a finance company, or the administrators of the assignor, have a proprietary interest in the proceeds of debts assigned under a security assignment in breach of a non-assignment clause. Acting for the finance company. Instructed by Bermans.
- **Petley v Butterfield Mortgages Ltd & Butterfield Guernsey Ltd** [2024] (Commercial Court) (HHJ Blohm KC)
Subject: Construction of legal charge and facility; estoppel by convention
Summary: C sought declaration that her husband's facility was outside the purview of a guarantee contained in her legal charge. Judge held that an O'Brien letter confirming legal advice given by her solicitor meant that she was estopped by convention from denying that the charge secured her husband's obligations. Simon acted for the defendant companies. Instructed by Judge Sykes Frixou.
- **X v Y** [2024]
Subject: Offshore investment fund; custodian; manager of fund; fiduciary duties.
Summary: Advising liquidators based in BVI & Cayman Islands whether the funds of a private family investment vehicle were lost in a valid investment scheme, or whether the scheme was a sham.
- **Wonop APS v Fetch.AI Ltd** [2023] (Commercial Court)
Subject: Scalable distributed ledger system; crypto FET tokens on Ethereum; meaning of "total circulating supply"; rectification.
Summary: C claimed damages for non-delivery of FET tokens under a contract for development of a scalable distributed ledger (blockchain). Fetch sought rectification of the contract and claimed Wonop had been overpaid. At trial, Judge gave judgment for Wonop. Acted for Wonop. Instructed by Howes Percival LLP.
- **Unicorn Payment Ltd v Worldpay (UK) Ltd** [2023] (Ch) (Caroline Shea KC)
Subject: Payment facilitators; credit card merchant agreement; Chargebacks.
Summary: C sought mandatory interim injunction that Worldpay should pay part of £5m held under a payment facilitator agreement. Judge dismissed application. Acted for Worldpay. Instructed by Shoosmiths LLP.
- **X v Y** [2023] Arbitration under ICC Rules
Subject: Share purchase agreement for sale of oil drilling company; guarantees.
Summary: Cs awarded £700,000 wrongly retained by buyer under share purchase agreement in respect of target company and 100% of their costs. Acted for Cs. Instructed by B P Collins LLP.
- **X v Y** [2022]
Subject: "Commercial Lien" private administrative process; "Affidavit of Obligations".
Summary: Bankrupt alleged he is entitled to use a private "Commercial Lien" process so as to create a multi-million pound security interest following service of an "Affidavit of Obligations". Acting for financier against whom he asserts the claim. Instructed by leading city firm.
- **X v Y** [2022] Arbitration under LCIA Rules (ongoing)
Subject: Share purchase agreement for sale of oil company; construction of SPA; claim for outstanding consideration.
Summary: C claims USD \$7m payable under an SPA and various side letters. Successfully opposed an application for security for costs even though his client was insolvent. Acting for C. Leading Tiernan Fitzgibbon.

Instructed by Dentons UK and Middle East LLP.

- **Vitol SA v Genser Energy Ghana Ltd** [2022] EWHC 1812 (Commercial Court)
Subject: International sale of goods; propane supply contract.
Summary: Vitol claimed £17m under a propane supply contract following an alleged force majeure. Simon acted for Genser, one of the largest oil companies in West Africa. Led Alexander Kingston-Splatt (Radcliffe Chambers). Instructed by Addleshaw Goddard LLP.
- **Circumference Investments (Europe) Ltd v Martin** (various), including [2021] EWHC 2389 (Ch) (Ambrose); [2021] EWHC 2691 (Ch) (Thompson)
Subject: Share purchase agreement; fraud and constructive trusts; worldwide freezing orders & proprietary injunction; enforcement in Luxembourg/France.
Summary: D sold to C his shares in Coficom, a financial services company based in Luxembourg. C rescinded the SPA on the grounds of fraud. D sought to sell his home and a portfolio of properties in Luxembourg and France. C obtained a worldwide freezing order limited to £5.4m and a proprietary injunction to prevent him from doing so. C obtained further orders relating to inadequate disclosure of assets, including an unless order. Case settled before trial. Acted for C. Led Zachary Kell (Radcliffe Chambers). Instructed by Dentons UK and Middle East LLP.
- **X v Y** [2021] (Commercial Court)
Subject: Claim to enforce arbitration award under ICC Rules.
Summary: C obtained judgment in Comm Ct to enforce Swiss arbitration award in respect of amounts due under a construction contract disrupted by the Libyan civil war. D applied to vary the judgment on the grounds that the rate applied by the Turkish Central Bank was too high. Acted for successful C. Instructed by Gately Plc.
- **X v Y** [2020] Arbitration under LCIA Rules
Subject: International consulting agreement for services in Saudi Arabia.
Summary: Claim for \$5m by multi-national corporation in respect of consulting and IT services provided under agreement with local partner in Saudi Arabia. Acted for successful Cs. Led Sahana Jayakumar. Instructed by Dentons UK and Middle East LLP.
- **X v Y** [2020]
Subject: Share purchase agreement for sale of hotel & resort development; enforcement against shares.
Summary: Buyer agreed to invest up to €58m in a hotel & land development in Greece, of which €22m was payable for shares. Advised the buyer whether part of the price was payable only upon satisfaction of performance of the seller's obligations. Instructed by lawyers in Athens.
- **Watson v Applegarth Dene Ltd & Hatton** [2019] EWHC 349 (Ch) (Hildyard J) LTL 08/05/19
Subject: Summary judgment after strike out for non-payment of costs; freezing order during insolvency moratorium; freezing order for amounts payable in the future; share purchase agreement.
Summary: C claimed deferred consideration under a share purchase agreement and a 5-day trial was listed for January 2019. Simon took over the case in late 2018 and obtained orders freezing the Ds' assets, striking out part of the defence for failure to comply with an order for specific disclosure, and striking out the rest of the defence for failing to pay costs orders. C then applied for judgment before trial. Although a statutory moratorium had been imposed in respect of D1 when its directors had applied for an administration order, the judge gave permission to continue with the application entered judgment in full and continued the freezing order post-judgment, increasing the amount to include an instalment that was not yet due. Acted for C. Instructed by B P Collins LLP.
- **Houghton v PB Donoghue (Construction) Ltd** [2017] EWHC 1475 (Ch) (Murray Rosen KC)
Subject: Contract formation; royalties and agent's commission; joint venture and property management agreements; 8-day trial.
Summary: C claimed £3m royalties or commission allegedly payable under four oral agreements made with the defendant waste management and

recycling company. D contended that C had been paid all he was entitled to be paid many years previously. The Judge dismissed C's case, stating that some of the claims "were so fantastic as to verge on the delusional". Acted for D. Instructed by B P Collins LLP.

- **Houghton v PB Donoghue (Construction) Ltd** [2017] 5 Costs L.R. 857 (Ch) (Morgan J)
Subject: Discretion to grant C permission to accept D's Part 36 offer while the trial was in progress; CPR r.36.11(3)(d).
Summary: At the end of day 2 (Friday) of an 8-day trial, and after Simon had conducted a robust cross-examination of C, the proceedings were adjourned early in order for C's witnesses to attend. The next day C served a notice of acceptance of D's Part 36 offer. C's application for permission to accept the offer was heard and dismissed by the applications judge on the grounds that there had been a material change of circumstances that would make it unjust to grant the permission sought. Acted for D. Instructed by B P Collins LLP.
- **Bibby Factors Northwest Ltd v HFD Ltd** [2016] 1 Lloyds Rep 517 (CA)
Subject: Assignment; rebates and early settlement; equitable set-off and estoppel; factoring & invoice discounting.
Summary: Court of Appeal held that where a factor sought payment from customers in respect of debts which it had bought, the customers were entitled to rely on the right of equitable set-off in respect of their right to a rebate for every supply, and for debit notes raised for defective performance. The close connection could not be severed by the customers' failure to inform the factor about the rebate as they had been under no obligation to do so, even though they had traded for 13 years. Acted for the factor. Instructed by Bermans LLP.
- **Capital for Enterprise Fund & Maven Capital Partners LLP v Bibby Financial Services Ltd** [2015] 6 Costs L.R. 1059
Subject: Conspiracy by unlawful means; costs budgets and interim payments.
Summary: Important case on cost budgeting. High Court held there was no jurisdiction to amend an approved costs budget after trial; that was a matter for a costs judge. The court might have jurisdiction to give an indication that it would be appropriate to depart from an approved costs budget, but if it did so, the jurisdiction should be exercised only in exceptional circumstances and only where the parties expressly or impliedly agreed that it was appropriate to do so. Acted for the factor. Instructed by Shoosmiths.
- **Qatar National Bank SAQ v Gulf Aviation Services Group WLL** [2016] (Commercial Court) (unrep)
Subject: Term loan; aircraft mortgage.
Summary: Acted for bank in claim to enforce term loan and aircraft mortgage. Instructed by Shoosmiths.
- **Kowalishin v Roberts & Tech21 UK Ltd** [2015] EWHC 1333 (Ch)
Subject: Contract formation; share purchase agreement; unjust enrichment.
Summary: C had invested in a company but was not entitled to a shareholding because he had paid the money in advance of a binding agreement to that effect. The parties had not intended to be contractually bound at least until heads of terms had been agreed. The court also rejected an exceptional alternative claim for "subjective re-valuation" of the money transferred and made an award equal to the investment plus compound interest since the date of payment. Acted for Ds. Instructed by Matthew Arnold & Baldwin LLP.
- **Capita Trust Ltd v Optical Service (UK) Ltd** [2014] EWHC 991 (Ch)
Subject: Loans; accounting, pension and tax records; two-day summary judgment.
Summary: Summary judgment was entered in full against a company that denied owing unpaid bonus payments to a deceased employee. Rose J. rejected the defence and unsupported assertions of the officers of the company as so incredible that they could properly be described as fanciful. Acted for Capita. Instructed by Matthew Arnold & Baldwin LLP.

- **Valley Grown Salads v Bassini** [2013] EWHC 1304 (Mackay J)
Subject: Banking and finance; loan agreements; freezing injunctions.
Summary: Defending application for summary judgment on claim for repayment of loans amounting to £4.5m on the grounds that the sums were paid as part of a covert share sale to circumvent the Stock Market Rules on the takeover of Watford Football Club. Judgment only given for £950,000, and freezing order reduced from £4.5m to £1m. Acted for the D against Nicholas Stewart KC. Instructed by B P Collins.
- **Vaughan v Von Essen Hotels 5 Ltd** [2007] EWCA Civ 1349
Subject: Share sale agreement; service provisions; agency.
Summary: Court of Appeal upheld the judge's decision that the relevant provisions of a clause in a share sale agreement relating to deemed service were mandatory rather than directory such that the hotels' warranty claims under the agreement were not served timeously. Acted for C. Instructed by Paul Davidson Taylor.
- **Colwill & Martin v Avraamides** [2007] BLR 76
Subject: Contracts (Rights of Third Parties) Act
Summary: The first time the Court of Appeal considered the 1999 Act, holding that a contract could not be enforced under s.1(1)(b) where the third party was not expressly identified, and that the use of the word "express", did not allow a process of construction or implication. Instructed by Goodman Derrick LLP.
- **Paul Davidson Taylor v White** [2007] Rep PN 7
Subject: Professional negligence (solicitors).
Summary: Court of Appeal criticised the distinction drawn in professional negligence cases between negligently failing to give proper advice and negligently giving incorrect advice, stating every case of giving incorrect advice necessarily involves failing to give proper advice. Acted for successful solicitor, Paul Davidson Taylor.
- **Vaughan v Von Essen Hotels 5 Ltd** [2006] EWHC 3586 (Ch) (Etherton J)
Subject: Share sale agreement; service provisions; agency.
Summary: Court held that the relevant provisions of a clause in a share sale agreement relating to deemed service were mandatory rather than directory such that the hotels' warranty claims under the agreement were not served timeously. Acted for C. Instructed by Paul Davidson Taylor.
- **Venture Finance Plc v Mead & McCarrick** [2006] 3 Costs LR 389
Subject: Factoring & invoice discounting; guarantee; joint & several liability.
Summary: Court of Appeal considered the proper order to make, where guarantors were severally liable for costs of enforcement. Acted for successful C. Instructed by Hammonds LLP.

BANKING & FINANCE

Simon works for a wide range of banks, factors and discounters, and other financial institutions. In addition to his advocacy and advisory work, he is also frequently asked to draft or advise upon financial agreements and security arrangements and has assisted a city firm in drafting a declaration of trust over the receivables for a £250m revolving receivables facility.

Recent work includes:

- **Re: A1 Comms Ltd** (in admin.) [2024] (ongoing)
Subject: Security assignment; non-assignment clause.
Summary: Listed for 3-day trial in July 2024 to determine whether a finance company, or the administrators of the assignor, have a proprietary interest in the proceeds of debts assigned under a security assignment in breach of a non-assignment clause. Acting for the finance company. Instructed by Bermans.
- **Petley v Butterfield Mortgages Ltd & Butterfield Guernsey Ltd** [2024] (Commercial Court) (HHJ Blohm KC)
Subject: Construction of legal charge and facility; estoppel by convention
Summary: C sought declaration that her husband's facility was outside the

purview of a guarantee contained in her legal charge. Judge held that an O'Brien letter confirming legal advice given by her solicitor meant that she was estopped by convention from denying that the charge secured her husband's obligations. Simon acted for the defendant companies. Instructed by Judge Sykes Frixou.

- **Russian sanctions**

Subject: Advising Russian nationals on various aspects of the sanctions regime contained in the Sanctions and Anti-Money Laundering Act 2018 and The Russia (Sanctions) (EU Exit) Regulations 2019 as amended.

- **X v Y [2024]**

Subject: Consumer Credit Act; regulated agreements; CFL Finance Ltd v Gertner.

Summary: Advised leading finance company on circumstances in which a compromise or time to pay agreement may give rise to a regulated agreement.

- **Unicorn Payment Ltd v Worldpay (UK) Ltd [2023] (Ch)**

Subject: Payment facilitators; credit card merchant agreement; Chargebacks.

Summary: C sought interim mandatory injunction that Worldpay should pay part of £5m held under a payment facilitator agreement. Judge dismissed application. Acted for Worldpay. Instructed by Shoosmiths LLP.

- **Finance and Credit Corporation Ltd (in liq) v Anderson & Elrick [2022] (QB)**

Subject: Bridging finance; guarantees; security for costs against liquidator; conclusive evidence clause.

Summary: Claim against directors on guarantees for £5.7m. Successfully opposed application for security for costs against company in liquidation. Case settled. Acted for C.

- **Arbuthnot Commercial Asset Based Lending Ltd v Johnson & Daines [2023]**

Subject: Invoice finance; limited guarantees; unlawful means conspiracy; fraud; fiduciary duties.

Summary: Judgment obtained against directors for £3.8m under claim under guarantee in respect of which a limit on liability was disapplied due to fraud. Acted for successful C. Instructed by Shoosmiths LLP.

- **Asset Advantage Ltd v Karpal [2021]**

Subject: Hire agreement; title to assets; contractual estoppel; guarantee.

Summary: Goods and services supplied to fit-out a trampoline park were set out in schedules to hire agreements. D denied liability under his guarantee and legal charge on the grounds that the hirer was not liable because services cannot be hired, and C did not have title to goods hired because title had been lost when they were affixed to the property. Court held that D was bound by his guarantee and legal charge. Acted for C. Instructed by Greenhalgh Kerr. Led Alexander Kingston-Splatt (Radcliffe Chambers)

- **Event Spaces Ltd v Gregg v Ingenious Entertainment VCT1 Plc [2019]**

Subject: EIS and VCT finance; misrepresentation; contractual indemnities.

Summary: D provided an indemnity to Ingenious in respect of any losses it might incur by investing in Event Spaces. Held that the indemnity had not been provided by reason of misrepresentations made by Ingenious concerning the effectiveness VCT tax avoidance scheme. Instructed by Debenhams Ottaway LLP.

- **Moore v Butterfield Mortgages Ltd [2019] EWHC 1960 (Ch)**

Subject: Summary judgment; term loans; bank's liability for acts of LPA receivers; estoppel by representation and convention; reservation of rights and waiver; conclusive evidence clauses.

Summary: C had an £8m investment facility with the bank secured against his property portfolio. He asserted that following expiry of their term (by variation, estoppel or waiver), the loans became repayable on demand so that before a valid demand the bank had debited default interest in breach of contract. He claims he paid £1.035m by mistake and has suffered £4m damages. Court held that arguments based on estoppel by representation,

estoppel by convention and waiver should be struck out. Acted for bank. Instructed by Judge Sykes Frixou.

- **Catalyst Business Finance Ltd v Very Tangy Television Ltd & Tuckwell** [2018] EWHC 1669 (Jefford J)
Subject: Bridging finance; guarantees and indemnities; primary liability as indemnifier; conclusive evidence clause.
Summary: Claim against director on his guarantee who sought to rely upon the £7.6m counterclaim of the borrower, Very Tangy, by way of defence. Court held that (1) the guarantee contained primary obligations and that C's certificate was binding as to liability and quantum, and (2) the counterclaim had no real prospect of success. Acted for C. Instructed by PDT Solicitors LLP.
- **Johal v Elm Property Finance Ltd** [2018] (May J) LTL 13/03/18
Subject: Bridging finance; non est factum; undue influence; video evidence.
Summary: A mortgagee claimed possession of property owned by the Ds who defended on the grounds of undue influence exercised by their son. The case was compromised upon terms attached to a Tomlin order at a mediation at which the Ds were represented by solicitor and counsel. Ds then applied to set aside the compromise on the grounds of non est factum and undue influence exercised by their son who had allegedly misled his father while acting as translator at the mediation. Video evidence revealed that the father spoke clear English and had no real prospect of contending that he did not intend to enter into the compromise or that he did not understand what had been agreed. Acted for the financier against Geraint Jones KC. Instructed by Francis Wilks & Jones.
- **BHL v Leumi ABL Ltd** [2018] 1 All ER (Comm) 965
Subject: Factoring & invoice discounting.; collection fees; contractual discretion; penalties; mistake and unjust enrichment.
Summary: High profile case in which the Mercantile Court held that a factor's collection fees of £1.2m plus VAT were not payable. Although the factor had a contractual discretion to determine the amount of the collection fee, it had not exercised that discretion or, if it did exercise a discretion, it was wholly arbitrary, irrational, and manifestly failed to take into account important factors. The indemnifier, BHL, was entitled to restitution on the grounds that it had paid £735,000 by mistake. Acted for BHL. Instructed by Eversheds Sutherland (International) LLP.
- **Bibby Factors Northwest Ltd v HFD Ltd** [2016] 1 Lloyd's Rep 517 (CA)
Subject: Assignment; retro rebates; equitable set-off and estoppel; factoring.
Summary: Court of Appeal held that where a factor sought payment from customers in respect of debts which it had bought, the customers were entitled to rely on the right of equitable set-off in respect of their right to a rebate for every supply, and for debit notes raised for defective performance. The close connection could not be severed by the customers' failure to inform the factor about the rebate as they had been under no obligation to do so, even though they had traded for 13 years. Acted for the factor. Instructed by Bermans LLP.
- **ABN Amro Commercial Finance plc v McGinn** [2014] 2 Lloyd's Rep. 333 (Flaux J.)
Subject: Factoring & invoice discounting; guarantees and indemnities; primary liability as indemnifier; losses under indemnity.
Summary: Claim for £9m against directors. Court held the directors had signed contracts of indemnity rather than guarantee, so they could not rely upon defences of their company, and any alleged failure to collect debts did not give rise to a defence of failure to mitigate under a contract of indemnity. Acted for ABN Amro. Instructed by Squire Sanders (UK) LLP.
- **Prima Equity Ltd v West Bromwich Commercial Ltd** [2013] EWHC 1450 LTL 27/03/13
Subject: Banking and finance; capital; default; facility letters.
Summary: Court held that a building society was not entitled to make demand for £8.5m, as it had, at the time of the demand, held excess funds that had been wrongly deducted as capital repayments from a borrower's bank account, which meant that no sums were in fact due at the relevant

time. Acted for the society against Mark Cunningham KC. Instructed by Shoosmiths.

- **Anglo-Irish Asset Finance Ltd v Flood & Riddell** [2011] EWCA Civ 799 (CA)
Subject: Banking; guarantees and indemnities; fresh evidence; security for costs.
Summary: Court of Appeal dismissed Ds' appeal from the decision of the Commercial Court. The Court allowed fresh evidence in relation to the new coalition Irish Government's policy towards the Irish banking system and the EU/IMF bail-out, and upheld the Judge's decision that it would not be just to make an order for security in favour of the Ds because the claim and counterclaim raised the same issues, and ordering the lender to give security would have the effect of giving the Ds' security for the costs of their own counterclaim. Acted for the bank. Instructed by Mishcon de Reya.
- **Anglo-Irish Asset Finance Ltd v Flood & Riddell** (unrep) 04/03/11 (Teare QC)
Subject: Banking; guarantees and indemnities; security for costs.
Summary: Acted as sole counsel for Irish lender in security for costs application. Claim for £35m on limited guarantees against directors, who brought a counterclaim for £220m and sought security for costs. The Commercial Court concluded that there was reason to believe that the lender would be unable to pay the Ds' costs if ordered to do so (because of political and economic uncertainty), but the judge declined to order security on the basis that the counterclaim raised substantially the same issues as the claim. Acted for the bank. Instructed by Mishcon de Reya.
- **RBS Invoice Finance Ltd v Dymond** [2012] (Lloyd Jones J) LTL 09/02/12
Subject: Factoring & invoice discounting; guarantees and indemnities; insolvency; sale at an undervalue by administrators.
Summary: Appeal dismissed on the grounds that the Defence was "thin" and would probably not succeed. D granted permission to defend on condition that he paid a substantial sum into court. Acted for the bank. Instructed by Mishcon de Reya.
- **Uddington Business Ltd v Browne & Maxwell** [2011] (Morritt J) LTL 09/12/11
Subject: Property investment; fraud and tracing; freezing orders; security for costs.
Summary: Chancellor held that where there had been persistent flouting of freezing and proprietary injunctions, the court had jurisdiction to strike out a defence, or order that Ds should provide security for the claim. The Ds only served evidence purporting to comply with the orders the day before the hearing so the court made a stringent unless order and ordered them to pay costs on an indemnity basis. Acted for the financier. Instructed by Mishcon de Reya.
- **Close Invoice Finance Ltd v Korpai** [2009] LTL 02/11/09
Subject: Factoring & invoice discounting; guarantees and indemnities; conclusive evidence.
Summary: High Court held that a short-form warranty given by an individual to a factor was analogous to a performance bond, that a certificate of conclusive was not contrary to public policy and bound the surety both as to liability and quantum. Acted for the factor. Instructed by Hammonds LLP.
- **Fairfax Gerrard International Ltd v Capital Bank Plc** [2008] 1 Lloyd's Rep 297
Subject: Trade finance; international sale of goods; conversion.
Summary: Court of Appeal construed a trade finance agreement and trust receipt, particularly a retention of title clause, to determine whether a company specialising in the international purchase and sale of machines had express authority to pass title of the machine in question before going into liquidation. Acted for the trade financier. Instructed by B P Collins.
- **Fairfax Gerrard Holdings Ltd v Rickson & Flanagan** [2008] (QB) (unrep)
Subject: Trade finance; fraud; sale by receivers at an undervalue.
Summary: High Court rejected defence by guarantors that a trade financier

had sold assets at an undervalue. Acted for the trade financier.

- ***Sinclair Investment Holdings SA v Versailles Trade Finance Ltd*** [2007] 2 All ER Comm 993 (Rimer J)
Subject: Trade finance; fraud; Ponzi scheme; breach of fiduciary duties, constructive trusts and tracing.
Summary: High Court considered whether there is a proprietary claim in respect of £29m profit made by the fraudulent director of Versailles Trade Finance who had dishonestly assisted in a breach of trust. Instructed by Sinclair.
- ***Quest 4 Finance Ltd v Maxfield*** [2007] 2 CLC 706 (Teare J)
Subject: Guarantees; fraudulent misrepresentation; non-reliance clause.
Summary: Court held that documents described as “Warranties” were properly characterised as guarantees, and that company directors that had been induced by misrepresentations to execute the Warranties were not estopped by declarations of non-reliance from alleging that they had relied on the misrepresentations and had been induced by them. Acted for the financier.
- ***Fairfax Gerrard International Ltd v Capital Bank Plc*** [2007] 1 Lloyd’s Rep. 171; [2007] BPIR 330
Subject: Trade finance; international sale of goods; reservation of title; buyer in possession; conversion.
Summary: Commercial Court rejected defences based on an agent’s authority to sell, mercantile agency and sale by a buyer in possession and held that by leasing an asset to its client, a Bank had converted a trade financier’s interest in a machine. Acted for the trade financier against John Randall KC. Instructed by B P Collins.

INSOLVENCY & COMPANY

Simon works in all areas of contentious insolvency and has worked with numerous firms of insolvency practitioners.

Recent work includes:

- ***Clauson v Knowles Construction Ltd*** [2024] EWHC 1520 (Ch) (ICC Greenwood)
Subject: Bankruptcy; loan; construction debt; setting aside a statutory demand.
Summary: Court refused to set aside statutory demand served on a debtor, even though he had established a genuine and substantial dispute in respect of £2.1m, and there remained £1.2m which was not disputed. Acted for the debtor. Instructed by Mischon de Reya.
- ***UrbanChain Ltd v Rainman Collateral Ltd (now Huoli Dragonfly)*** [2024]
Subject: Winding up petition.
Summary: UrbanChain provides energy services involving integrated blockchain and artificial intelligence, and Rainman acted as an intermediary between UrbanChain and its customers in the energy market. Two-day hearing to determine whether Rainman disputed the debt on genuine grounds. Court held debt not disputed. Acted for UrbanChain. Instructed by Shoosmiths.
- ***X v Y*** [2024]
Subject: Appointment of liquidators; amendment of articles by conduct; informal but unanimous assent of the shareholders; *Duomatic* principle.
Summary: Advising whether the appointment of liquidators of numerous companies was valid where decision of directors to propose resolution to wind up was made at an inquorate board meeting.
- ***X v Y*** [2024]
Subject: Appointment of administrators; no prior notice to secured creditor.
Summary: Directors failed to give notice of intention to appoint to secured creditor, because charge wrongly marked as satisfied. Advised whether breach of the relevant statutory requirements meant the appointment was a nullity, or defective, but curable.

- **X v Y** [2023]
Subject: E-money pre-payment cards; safeguarded pool of assets; trust assets.
Summary: Company provided card payment services to card issuers in respect of e-money to electronic money institutions. Company became insolvent. Advised the liquidators whether funds retained by the card issuers were held on trust.
- **National House Building Council v Mizen Properties Ltd** [2023] 7 WLUK 125 (TCC)
Subject: Challenge to CVA; material irregularity; indemnity; judgment in default against company in administration.
Summary: NHBC challenged a CVA of D's subsidiary, which allegedly compromised its claim under D's indemnity. CVA revoked on the grounds of material irregularity, so NHBC applied for judgment in default. Judgment entered even though Mizen entered administration the day before. Acted for NHBC. Instructed by B P Collins LLP.
- **Hunt (as Liquidator of Solartech North East v Snaith & Hall** [2022] (Ch)
Subject: Unsolicited telephone calls; Information Commissioner; fiduciary duties.
Summary: Liquidator alleged directors had caused the company to make unlawful telephone calls so as to incur penalties levied by the Information Commissioner, thus causing its insolvency. Acted for the Liquidator. Instructed by Francis Wilks & Jones.
- **Arena Television Ltd (in admin.) v Yeowart & Hopkinson** [2022] EWHC 952 (Ch) (ICC Judge Mullen)
Subject: Hire purchase fraud; expedited bankruptcy petitions; immediate appointment of trustees in bankruptcy from same firm as administrators (Kroll).
Summary: Bankruptcy orders 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). Acted for the petitioners. Led Alexander Kingston-Splatt (Radcliffe Chambers). Instructed by Addleshaw Goddard LLP.
- **Arena Television Ltd (in admin.) v Yeowart & Hopkinson** [2022] (Ch) EWHC 918 (Ch) (Green J)
Subject: Hire purchase agreements; fraud; fiduciary duties and constructive trusts; worldwide freezing orders & proprietary injunction; declaration of trust of foreign property.
Summary: Cs claimed £250m damages arising out of alleged fraud involving HP agreements and financing of assets that did not exist and/or bore forged serial numbers. Cs obtained a worldwide freezing order limited to £250m and a proprietary injunction. Summary judgment on liability with interim order for £100m to be paid by Ds. Acted for Cs. Led Alexander Kingston-Splatt (Radcliffe Chambers). Instructed by Addleshaw Goddard LLP.
- **Re: A Company** [2022]
Subject: Administration application and pre-pack sale.
Summary: Advised bondholders of a premier league sports team on a prospective challenge to an application for an administration order and a pre-pack sale. Instructed by JPP Law LLP.
- **Re: Coombes** [2022]
Subject: Bankruptcy; invoice finance; guarantee and indemnity; setting aside a statutory demand.
Summary: Court set aside statutory demand served on a guarantor on the grounds that (1) there was a real prospect of establishing that the debt was disputed because no valid demand had been made, or the creditor was estopped from enforcing the Guarantee until it had finished collecting the book debts, and (2) the demand ought to be set aside on the grounds that there was sufficient concerns about quantum. Acted for the guarantor. Instructed by Mischon de Reya.

- **Deutsche Apotheker-und Arztebank EG v Reich** [2022]
Subject: Rescission/annulment of bankruptcy order; COMI; forum shopping.
Summary: Acted for discharged bankrupt (German) opposing creditor's application to rescind/annul a bankruptcy order made on grounds that England was not his habitual residence and/or he had failed to disclose foreign assets. Settled at court on satisfactory terms. Instructed by Spencer West LLP.
- **Lynch v Aldermore Bank Plc** [2021] BPIR 854 (Chief ICC Judge Briggs)
Subject: Proof of debt; forged documents; guarantees; Statute of Frauds 1677.
Summary: Bankrupt's application to challenge the decision of his trustee in bankruptcy to admit the bank's proof of debt on the grounds that he alleged the guarantee relied upon by the Bank was a forgery. Acted for the Bank. 10-day trial in March 2021. Led Sahana Jayakumar. Instructed by Francis Wilks & Jones.
- **Manolete Partners Plc v Ahmed & Wessex Bristol Investments Ltd** [2021] (Ch)
Subject: Preference; floating charge avoidance; fiduciary duties; dividends as transactions at an undervalue or preferences.
Summary: Claim for £3m against director of insolvent company asserting that a debenture created during a restructure, and various dividends and interest payments were void or avoidable. Case settled. Acted for director. Led Alexander Kingston-Splatt (Radcliffe Chambers). Instructed by B P Collins LLP.
- **Finance and Credit Corporation Ltd v Anderson & Elrick** [2020] (QB)
Subject: Bridging finance; guarantees; security for costs against liquidator; conclusive evidence clause.
Summary: Claim against directors on guarantees for £5.7m. Successfully opposed application for security for costs against company in liquidation. Case settled. Acted for C. Instructed by Powells LLP.
- **Diomed Developments Ltd v Leumi ABL Ltd** [2020] (Ch)
Subject: Factoring & invoice discounting; constructive trusts; proprietary claim to debt proceeds; priority dispute between factor and chargee; estoppel by convention.
Summary: C claimed an interest in debt proceeds in respect of the sale of pharmaceutical products. Leumi claimed to have purchased the debts under an invoice finance agreement. Classic priority dispute to be determined in accordance with the rule in Dearle v Hall. Case settled. Acted for Diomed. Instructed by Debenhams Ottaway.
- **X x Y** [2020]
Subject: Preference & transaction at an undervalue (grant of debenture. various payments & dividends).
Summary: Acted for director against assignee of claims available to liquidator of an insolvent company. Claim for over £2m. Case settled. Instructed by B P Collins LLP.
- **Palmer v Moneywise Wealth Management Ltd** [2020] (unrep)
Subject: Statutory demands; bridging loans; contract formation; unfair relationship.
Summary: Court refused extension of time to apply to set aside statutory demand on grounds that no good reason for delay, and there was no sufficiently strong case for the merits to be taken into account. Acted for financier. Instructed by Francis Wilks & Jones.
- **X x Y** [2018]
Subject: Credit unions; fraud.
Summary: Advising administrators of credit union on alleged substantial fraud carried out by director. Instructed by Francis Wilks & Jones.
- **Fairfax Gerrard Holdings Ltd** (in admin) [2012-2019]
Subject: Trade finance; guarantees; mortgages; consumer credit.
Summary: Acted for Fairfax in numerous recovery actions during its 7-year administration. Instructed by Gately LLP and Grant Thornton.
- **Re: Afzal** (a bankrupt) [2017] (ChD) 16/01/17 (Robert Miles QC)
Subject: Legal and beneficial title to shares; trust of shares; gratuitous transfer of shares; invalid allotment; director's fiduciary duties; forged

documents.

Summary: The case involved a number of purported transfers and allotments of shares of a hotel group: a transfer by the initial subscribers to two transferees, one of whom became bankrupt and purported to transfer his share to a third party, then an apparent allotment of new shares to dilute interests of shareholders. The trustee in bankruptcy also maintained that the Rs had caused to be created a number of forged documents and none of the shares or allotments were effective. The case settled on the first day during Simon's opening speech. Acted for the trustee.

- ***Barnett & Henley Estates Ltd v Rose, Jackaman & Bales***[2011] LTL 21/09/11

Subject: Bankruptcy; pre-emption rights; minority shareholders; statutory auditor; expert determination and collusion/bias.

Summary: High Court held that an accountant's certificate as to the fair value of a bankrupt's shares was not binding on his trustee in bankruptcy because the certifier was not the statutory auditor, as required by the company's articles of association. The Court also found that the certificate would not have been binding on the grounds that the accountant had colluded with, and was biased in favour of, the majority shareholders in order intentionally to produce a certificate with a low value. Acted for the Cs. Instructed by B P Collins LLP.

- ***Dashfield & Shepherd v Davidson & Ruddy***(2008) BCC 662; [2009] 1 BCLC 220 (Lewison J)

Subject: Joint venture company; pre-emption rights; fiduciary duties; s.459; informal but unanimous assent of the shareholders; *Duomatic* principle.

Summary: Court held that a company's articles contained a mutually enforceable obligation to buy and sell the shares of a deceased shareholder, and it was implied that upon his death, the company was obliged to take reasonable steps to procure that its accounts for the last completed financial year were audited before the auditors certified the value of the deceased's shares. Acted for the Cs. Instructed by Paul Davidson Taylor.

- ***Sinclair Investment Holdings SA v Versailles Trade Finance Ltd***[2007] 2 All ER Comm 993 (Rimer J)

Subject: Trade finance; fraud; Ponzi scheme; fiduciary duties; constructive trusts and, tracing.

Summary: High Court considered whether there is a proprietary claim in respect of £29m profit made by the fraudulent director of Versailles Trade Finance who had dishonestly assisted in a breach of trust. Instructed by Sinclair.

CIVIL FRAUD

Much of Simon's work now concerns disputes involving fraud and conspiracy and he is presently leading a number of members of chambers on the larger disputes. He is presently involved in a case which may lead to a crypto exchange being held liable for knowing receipt when it allowed misappropriated crypto to be transferred into a Monero (XMR) wallet so that it can no longer be traced through the blockchain.

Simon's recent fraud work includes the following:

- ***Arbuthnot Commercial Asset Based Lending Ltd v Johnson & Daines*** [2023]

Subject: Invoice finance; unlawful means conspiracy; fraud; fiduciary duties; guarantees.

Summary: Judgment obtained against directors for £3.8m in respect of damages for invoice finance fraud and under guarantees. Acted for successful C. Instructed by Shoosmiths LLP.

- ***Arena Television Ltd (in admin.) v Froom & Cousins*** [2022] (ongoing)

Subject: Hire purchase agreements; unlawful means conspiracy; fraud; fiduciary duties; accounting conspiracy.

Summary: Cs claim £284m damages arising out of alleged fraud involving

HP agreements and financing of assets that did not exist and/or bore forged serial numbers, and financial manipulation of company accounts. Acting for Cs. Leading Alexander Kingston-Splatt (Radcliffe Chambers). Instructed by Addleshaw Goddard LLP.

- **Arena Television Ltd (in admin.) v Yeowart & Hopkinson** [2022] EWHC 918 (Ch) (Green J)
Subject: Hire purchase agreements; fraud; fiduciary duties and constructive trusts; worldwide freezing orders & proprietary injunction; Bitcoin & crypto; judgment on liability and declaration of trusts of foreign property.
Summary: Cs claim £250m damages arising out of alleged fraud involving HP agreements and financing of assets that did not exist and/or bore forged serial numbers. Cs obtained a worldwide freezing order limited to £250m and a proprietary injunction. Cs obtained summary judgment on liability and interim order for £100m on account of damages pending remedies hearing. Acted for Cs. Led Alexander Kingston-Splatt (Radcliffe Chambers). Instructed by Addleshaw Goddard LLP.
- **X v Y** [2022]
Subject: Estate agency franchise; fraud.
Summary: Advised shareholders who had invested in an estate agency franchise on the basis of assurances as to future turnover and profits. Case settled on satisfactory terms. Instructed by Shoosmiths
- **Conister Bank Ltd v Burns** [2020] (Commercial Court)
Subject: Factoring & invoice discounting; fraud; banking agreement; guarantees.
Summary: Claim for £2m for losses suffered by bank when an invoice financier to which it had advanced funds became insolvent. Acted for the defendant directors. Claim settled before 10-day trial. Instructed by Woodfines LLP.
- **Mobeus Equity Partners IV LP v Hinge** [2020] (Comm Ct)
Subject: Share purchase agreement; breach of warranty; fraud.
Summary: Investment company claimed £14m loss from sellers of Geotech, a company involved in soil stabilisation for the construction industry. Acted for sellers. Claim settled. Led Sahana Jayakumar. Instructed by PDT Solicitors LLP.
- **Bibby Factors Slough Ltd v Wilkes** [2022] (Comm Ct) (Pelling QC)
Subject: Conspiracy; fraud; factoring & invoice discounting.
Summary: Bibby claimed to be the victim of an invoice discounting fraud. Judgment obtained following order striking out the Defences for breach of an unless order in respect of the non-payment of costs. Acted for Bibby. Instructed by Francis Wilks & Jones.
- **Prior v Santander UK Plc** [2019] (Ch) (unrep)
Subject: Wine investment; conspiracy; fraud; constructive trusts and proprietary tracing remedy; freezing injunctions.
Summary: Victims of a wider £20m wine investment fraud conducted by Bordeaux Wine Cellars obtained a Bankers' Trust order in respect of five bank accounts said to contain proceeds of the fraud. Acted for the applicant. Instructed by Francis Wilks & Jones.
- **Young & Young v FCFM Group Ltd** [2019] (Ch) (unrep)
Subject: Contract formation; insider trading; conspiracy; fraud; CREST; specific performance; dematerialised shares.
Summary: Cs sought specific performance of a contract for the sale of speculative oil shares alleged to have been entered into with a hedge fund hours before they were suspended by the Stock Exchange. The shares subsequently went up in value by 300%. D defended on the grounds that Cs had conspired to defraud by using inside information. Compromised just before 8-day trial. Acted for D. Instructed by Francis Wilks & Jones.
- **Olympus Construction Wessex Ltd & Barfoot v Bibby Factors Ltd** [2020] (Ch) (unrep)
Subject: Conspiracy; fraud; factoring & invoice discounting.
Summary: Acted for Bibby in defending claim by Olympus and its director in £2m claim on the grounds that Bibby had conspired to defraud the company by putting it into administration. Case settled on modest terms.

Instructed by Francis Wilks & Jones.

- **Capital for Enterprise Fund & Maven Capital Partners LLP v Bibby Financial Services Ltd**[2015] EWHC 2593 (Ch)
Subject: Conspiracy; enterprise loan and share warrants; pre-pack administration; factoring & invoice discounting.
Summary: Claim for £2m for losses arising when Bibby put oldco into administration, and funded both oldco and newco. The Judge dismissed the claim after a 5-day trial because any acts of Bibby caused no loss as oldco was hopelessly insolvent. Acted for the factor. Instructed by Shoosmiths.
- **Sinclair Investment Holdings SA v Versailles Trade Finance Ltd**[2007] 2 All ER Comm 993
Subject: Trade finance; fraud; fiduciary duties, tracing.
Summary: High Court considered whether there is a proprietary claim in respect of £29m profit made by the fraudulent director of Versailles Trade Finance who had dishonestly assisted in a breach of trust. Instructed by Sinclair.
- **Time Facilities Maintenance Ltd v Potential Finance Ltd** [2004] Ch.D; LTL 28/02/05
Subject: Factoring & invoice discounting; s.236 application by liquidator.
Summary: Court held that parties to a factoring agreement had frequently varied the agreement by a course of conduct, thereby abandoning or waiving a clause requiring variations to be in writing. Acted for the factor. Instructed by Paul Davidson Taylor.

PUBLICATIONS

Simon is the author of two of the most respected and widely-read commercial law publications:

“Salinger on Factoring” (6th ed., Sweet & Maxwell 2020). This is recognised as the leading textbook on receivables financing and is widely quoted. Simon has been responsible for rewriting the last two editions. The 6th edition is now available as an eBook.

“Goode on Proprietary Rights and Insolvency in Sales Transactions” by Prof. Sir Roy Goode (3rd ed., 2009) (sole editor). This important book deals with the nature of proprietary rights that can arise in the context of contracts for the sale of goods, both domestic and international. The five chapters contain a penetrating analysis of the following topics: (i) Concepts of ownership, possession and sale, (ii) Acquiring title to oil, gas, minerals and precious metals, (iii) Buying through an agent, (iv) Dealings in warehoused goods and goods in transit, (v) Reservation of title, constructive trusts and tracing rights in goods, products and proceeds.

He is also lead editor of **“Atkin’s on Sale and Supply of Goods and Services”** (LexisNexis 2022).

QUALIFICATIONS

Wolfson College Cambridge – History MA (Cantab)

MEMBERSHIPS

- Commercial Bar Association
- Chancery Bar Association
- R3 Association of Business Recovery Professionals
- London Common Law and Commercial Bar Association

RECOGNITION

- “Simon Mills really sticks up for the client’s interests.” (Chambers and Partners 2024)
- “A very good senior junior, who really knows his onions.” (Chambers and Partners 2024)

- *"His command and understanding of the asset-based lending and alternative finance market is second to none."* (Chambers and Partners 2023)
- *"A very good advocate, who is excellent at strategy. Rather than just going through the legal motions, he thinks outside the box and considers best how to win the fight."* (Chambers and Partners 2022)
- *"A great barrister when you have a big fight on your hands." "Not afraid to roll up his sleeves, he is a hard worker who is lovely to work with."* (Chambers and Partners 2021)
- *"Very strategic and good at following the right leads in investigations. He will really research a case, and go over and above to get a result." "Simon Mills is a master tactician who is as good on his feet as he is on paper."* (Chambers & Partners 2020)
- *"Responsive and hard-working, he's a master tactician who runs rings around his opponents. Clients love him." "Simon is user-friendly in his approach, and extremely comfortable in meetings."* (Chambers & Partners 2019)
- *"Extremely user-friendly and a man of great technical expertise, whose written pleadings are well thought out." "Diligent and great with clients, his advice is certainly of silk standard."* (Chambers & Partners 2018)
- *"He is the first point of call for highly technical contract disputes and any litigation requiring the touch of a master strategist." "A formidable yet polite practitioner, he's very down-to-earth and absolutely outstanding on his feet."* (Chambers & Partners 2017)
- *"A formidable advocate and a must-have part of our litigation arsenal." "Not only does he know his stuff, but he's also good on his feet and he thinks outside the box."* (Chambers & Partners 2016)
- *"He is "technically brilliant and is a master tactician. In court, he is a fighter, and he's a barrister you always want on your side, rather than against you"* (Chambers & Partners 2015)
- *"Hands-on, approachable, excellent with clients, empathetic whilst professional, good on strategy and tactics, and thinks outside the box. Readily available, irrespective of time zones and will work around clients to include after-hour conferences – goes above and beyond."* (The Legal 500 2024)
- *"Simon is exceptionally user-friendly. He can relate to clients and their needs, and he is very easy to deal with. Simon is also very good on his feet in court."* (The Legal 500 2024)
- *"Simon has an encyclopedic knowledge on all things asset-based lending, as well as being the king of injunctions. He is an exceptional lawyer on his feet in court. He is also very user friendly."* (The Legal 500 2024)
- *"Really invests in the claim and feels like part of the team. Really friendly, approachable and personable." "Very commercial, bright, calm, instils confidence, great advocate and thorough and analytical written advice."* (The Legal 500 2023)
- *"He is very good at forensic analytic detail. He is also charming and clients trust him immediately. Instructing solicitors rely on him hugely."* (The Legal 500 2022)
- *"Simon will really fight the corner of his clients and gets the job done – he's highly regarded as a senior junior but in truth can out-perform most QCs."* (The Legal 500 2021)
- *"Commercially astute, technically brilliant, and a fighter."* (The Legal 500 2020)
- *"A supreme strategist and market leader in invoice discounting and factoring."* (The Legal 500 2019)
- *"He has an eye for detail and a fantastic understanding of how judges look at things."* (The Legal 500 2017)
- *"He gets things right and gives calm and considered advice."* (The Legal 500 UK 2016)

