

MARK HARPER QC

Year of call: 1993
Year of silk: 2016

Clerked by: Gary Young Harry Young

AREAS OF EXPERTISE:

Banking & Finance Arbitration Company Commercial
Litigation Insolvency Partnership Professional Negligence
Real Estate Litigation Sport



Commercial Litigation

Mark regularly provides representation and advice on litigation proceeding in the Chancery Division, Commercial Court, Mercantile Court and Technology & Construction Court with his expertise in this area including agency, company litigation (including shareholder disputes and claims against directors/fiduciaries), confidential information, contract disputes, employer/employee post-termination disputes, insurance, restraint of trade and sale of goods.

Significant/Reported Cases

Wootliff v Rushton-Turner & others [2017] EWHC 3129 – unfair prejudice petition considering whether or not a joint venture company was a quasi-partnership and whether or not removal and/or dilution of shares was unfairly prejudicial conduct

Wootliff v Ruston-Turner & others - jurisdiction under s996 Companies Act 2006 wide enough to include a payment of compensation by the Company to the Petitioner for wrongful dismissal.

Brian John Harris v Microfusion 2003-2 LLP & others - representing the C (being the representative of a group of investors in a Film Partnership LLP) in seeking permission to bring common law derivative claim against the operators of the LLP. Permission granted at first instance for 2/3 claims with issue to be considered by the CA in 2016

MTC (UK) Ltd v Sir Bradley Wiggins [2014] – represented Sir Bradley in defending the claim brought by his former management company for alleged breach of contract in terminating the management agreement and an account of commissions/payments due.

Houlgrave v Houlgrave and Beaconsfield Footwear Limited -Mark acted as junior to Lesley Anderson QC representing the Claimant in 2012 (one of the largest claims to be heard on the Northern Circuit).The claim alleged that the Claimant was deceived by the Defendants to sell his shares at below market value thereby enabling the shares to be sold there-after for their true market value. The claim involved a consideration of the circumstances in which one shareholder/company can be a fiduciary to an excluded shareholder/director. The trial lasted 8 weeks (Norris J)before compromising.

Sikorski v Sikorski [2012] EWHC 1613 –unfair prejudice petition and the circumstances in which a breach of a shareholders agreement could found such a petition and the circumstances in which relief other than a share-purchase order would be appropriate

Proactive Sports Management Ltd v Rooney & Others [2010] EWHC 1807 (QB) (restraint of trade in the context of an agreement between football player and agent)

Proactive Sports Management Limited v Rooney [2011] EWCA Civ 1444 - (acting for Wayne Rooney (lead by Paul Chaisty QC) in successfully upholding the first instance decision that his Image Rights Representation Agreement was an unreasonable restraint of trade).

Quinn v CC Automotive Group Ltd (t/a Carcraft) [2010] EWCA Civ 1412 – apparent authority and the issue of the knowledge on the part of the person dealing with the apparent agent which will prevent them from relying upon the apparent authority

Office of Fair Trading v Miller [2009] EWCA (Civ) 34 (committal proceedings in the context of breaches of Stop-Now Orders)

Nigel Fryer Joinery Services Limited v Ian Firth Hardware Limited [2008] EWHC 767(Ch) (issues of repudiation and compensation entitlement under the Commercial Agents Regulations)

Forrest & Sons Limited v CGU Insurance Plc [2006] Lloyd's Rep. I.R. 113(variation of risk, alterations, disclosure in relation to insurance contract)

First Quench Retailing Limited v Whitbread Plc [2004] EWHC 366 (Ch)(rectification of commercial contract)

Fortman Holdings Ltd v Modem Holdings Ltd [2001] EWCA Civ 1235 (construction of accelerated payment(s) clause)

Profile

Mark is a member of the Business and Property team in Chambers. As evidenced by his ranking in Chambers & Partners as a leading silk across 6 practice areas, he is viewed (by peers, solicitors and clients) as the “complete all-rounder” being equally adept at all aspects of the advocate’s role which he couples with tactical/strategical acumen and an affable and approachable style. His skills and reputation as a robust cross-examiner mean that he is particularly sought after for trial work.

Mark appears regularly in the Court of Appeal, High Court and in Arbitrations.

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Areas of Expertise

Arbitration

Banking & Finance

Commercial Litigation

Company

Insolvency

Partnership

Professional Negligence

Real Estate Litigation

Sport

Memberships

Chancery Bar Association

Northern Chancery Bar Association

Northern Circuit Commercial Bar Association

Recent Reported Cases

Maheer v Maheer - Chancery Division [2019] EWHC 3613 (Ch) 26 Nov 2019 - Civil evidence; Trusts - Bank statements; Removal; Specific disclosure; Trustees

Robert Glew and Denton and Co Trustees Ltd v Matossian-Rogers - Chancery Division [2019] EWHC 3183 (Ch) 22 Nov 2019 - Company law; Civil procedure - Breach of fiduciary duty; Derivative claims; Directors' powers and duties; Minority shareholders; Permission to issue

Buckingham Homes Ltd v Rutter & Others [2019] EWHC 1760 (Ch) - successfully acted for the defendant directors in defending a claim that they had breached their statutory duties by selling a property as opposed to retaining and developing it

Re Audas Group Ltd [2019] EWHC 2304 (Ch) - successfully acted for the petitioner in establishing that he had been unfairly prejudiced as the majority shareholders had dismissed him when acting in bad faith and/or for improper purpose, had not offered him fair value for his shares and had managed the company post his exclusion without complying with the terms of the Shareholders Agreement

Zavarco Plc v Nasir [2017] EWHC 2877 - requirement for subscriber shares of €36 million to be paid in cash and the interaction between sections 584, 593 and 594 CA 2006

Philbin v Davies [2018] EWHC 3472 - setting aside a statutory demand presented on the basis of the alleged shortfall debt under a consumer loan where the agreement was subject to an unfair relationship challenge and there was a claim that the security had been sold at an undervalue.

Re Capital Funding One Limited (in Administration) [2017] EWHC 3567 - issue as to what were the applicable repayment terms under a loan and therefore whether or not Administrators had been validly appointed

Utilise TDS Ltd v Neil Davies & others [2016] EWHC 2127 - whether or not an implied term reserving the Cs' rights to proceed with claims against other defendants was to be implied into a contract of settlement

Publications

"Can I have my deposit back please" (insolvency position where consumer deposits are used to fund insolvent companies) [2014] 6 CRI 225

"Fiduciary Duties owed to the excluded shareholder" (with Lesley Anderson QC) Law & Financial Market Review January 2013

Qualifications and Awards

Downing College, Cambridge – Law MA Hons (1989 – 1992)

Hardwicke Scholar (Lincoln's Inn)

Recommendations

Legal 500, 2020

"Has excellent bedside manner with clients."

Chambers UK 2020

"He turns work around very quickly and considers all aspects of a case. He doesn't get lost in the minutiae and gets immediately to the crux of the matter. He's very quick, bright, easy to work with and his written work is excellent." "He's very personable and approachable."

"Harper gives very concise, clear and firm advice. He is not afraid to express his opinion and most importantly he inspires confidence in his clients." "He has a good style and a very good grasp of the law. He is strong in court, has a persuasive advocacy style and judges listen to him."

"A brilliant barrister who is great on his feet and very good with judges. He's user-friendly and extremely responsive."

"He is a good team player. Clients like him and he is an intelligent, brilliant lawyer." "His oral advocacy is very smooth, very sweet and very persuasive."

"He is extremely good on his feet and has very good analytical sense." "He is clear and authoritative, has good legal knowledge and, most importantly, he inspires confidence in his clients."

"He prepares well and very quickly, and he's very client-friendly. His advice is easily understandable." "He is very good at cutting through detail to provide practical advice and develop successful strategy."

Chambers UK 2018

"Mark is astute and commercial, as well as being dependable and widely admired."

"Very calm, level-headed, approachable and methodical. He's forceful without being aggressive."

"He has excellent commercial awareness and, having seen him in court, he is an exceptional advocate." "He is very organised, clear and a very nice chap."

"An impressive advocate who is highly approachable, very practical and structured in his thinking and gives sensible commercial advice with no waffle."

"He's very thorough, personable and incisive. An excellent advocate who focuses on the key issues."

Legal 500 2018

'He has a great bedside manner with clients.'

Legal 500 2017

'A team player throughout the litigation process.'

Chambers UK 2017

"The speed at which he can turn things round is incredible. He is a great advocate who is quick at thinking on his feet, and his way with the judiciary is great." "He is fantastic."

"His reputation is excellent and he gives a first-rate service to clients." "He is very pragmatic, very user-friendly and very good on his feet."

"He's always a very safe pair of hands - excellent and good with clients, he is short and succinct in his advice, which goes down well." "He's a class

above most and very good on his feet before a judge."

"An excellent trial advocate who excels at tough cross-examination." "He's always a very safe pair of hands. He's excellent, good with clients, and short and succinct in his advice which goes down well."

Chambers UK 2016

"Technically excellent."

"A safe pair of hands and very commercial."

Recent work: Represented Travel Counsellors against Barclays Bank in claims alleging the mis-selling of an interest swap product and the improper deduction of 'fees' from accounts.

"An extremely capable lawyer and a very hard worker. He leaves no stone unturned in seeking out the detail of a matter and is confident in his own abilities. He has the hallmark of quality."

"Forthright, exceptionally commercial and gets straight to the nub of the issue - exactly what the clients want."

Chambers UK 2015

"He's pragmatic and very user-friendly, and his advocacy is also excellent."

"When you see that you're against him your heart sinks." "He's an astute tactician. He doesn't sugar the pill, and clients certainly appreciate that."

"He is quietly and efficiently effective."

"He is very quick at spotting the issues and distilling them down into simple advice and action."

Chambers UK 2014

"He always gives a consistent performance in court. He is softly spoken, measured and always gets on with judges - that's how he wins cases."-

"He provides a superb all-round service, combining strong technical skills with a personable approach. He is regarded as one of the best in his field in commercial litigation."

"He is very bright and effective - I would not hesitate to instruct him."

Legal 500 2014

"A must-go-to junior counsel"

Chambers UK 2013

"Mark Harper is a barrister with a strong commercial chancery practice. He focuses largely on unfair prejudice petitions. According to one interviewee: "You can drop him into any situation and he will rise to the challenge."

"Mark Harper receives praise for his "strong advocacy skills." He is especially adept at cross-examination as "he is able to identify and exploit weaknesses in his opponents to great effect. "He has notable expertise in matters such as shareholder and commercial disputes, professional negligence cases and restraint of trade matters"

"Mark Harper who is sought out by instructing solicitors for his experience in the asset finance sector. He is recommended "

