

**DR NATHAN SMITH | MANCHESTER,
LEEDS & BIRMINGHAM**

Year of call: 2007

Qualifications: Graduate Diploma in
Law, Atomic & Laser Physics DPhil,
Physics MPhys

Clerked by: Brandon Singh Louie
Morrissey

AREAS OF EXPERTISE:
Banking & Finance Commercial
Litigation Company Insolvency
Partnership Private Client, Trusts and
Probate Professional Negligence
Real Estate Litigation Technology &
Construction



Profile

Nathan joined chambers in April 2008 and practices in all areas of commercial dispute resolution and business and property law, with a particular emphasis on real estate, insolvency, professional negligence, shareholder disputes and probate.

Nathan regularly appears in the Business and Property Courts and the County Court for banks, institutional clients, companies of all sizes and individuals. Nathan also frequently appears in the First Tier Tribunal, Property Chamber.

Nathan approaches every instruction with the aims and objectives of his clients in mind and understands the need to provide clear and comprehensive advice to enable his clients to effectively navigate through litigation.

Year of Call: 2007

Areas of Expertise

Banking & Finance

Nathan regularly advises and appears in claims related to mortgages, mortgage fraud, loans, guarantees and other financial disputes. Nathan frequently appears on behalf of major banks, smaller lenders and companies, and individuals.

Commercial Litigation

Nathan has experience of dealing with a wide variety of commercial litigation including: contract disputes, arbitrations, injunctions, debt and guarantee claims, sale of goods act claims and unfair terms and relationships.

Examples include:

- (2019) Appearing for the claimants in a commercial arbitration following the termination of an agency agreement;

- (2019) Applying for a variation to a freezing injunction to increase the amount the applicants could use to fund their legal expenses;
- (2019) Acting on behalf of a Cypriot development company in the Commercial Court in London, in a dispute over alleged representations made prior to the sale of more than 30 properties. Led by David Casement QC;
- (2018/19) Acting as junior counsel in a £7 professional negligence claim arising out of the drafting and negotiation of a shareholder agreement;
- (2018/9) Acting for a financial services company in a dispute with an authorised representative over whether its clients had been contacted in breach of restrictive covenants;
- (2018/19) Representing a solicitor for alleged negligence in a claim arising out of a multi-million-pound property development;
- (2018) Acting for a large manufacturer in a dispute with a hire company over the leasing of vehicles;
- (2018) Acting for a high street bank in several claims involving unauthorised debit card payments;
- (2018) Representing a defendant in a dispute over title to a vehicle, where arguments were raised as to the transfer of title under the Sale of Goods Act 1979 and the Factors Act 1889;
- (2018) Representing a defendant in a mis-representation claim arising out of a settlement agreement;
- (2018) Obtaining injunctive relief for a national chain of public houses to enforce the terms of a lease.

Dispute Resolution

Nathan has represented numerous clients in mediation and always works to ensure his advice is practical and that the process is used as effectively as possible to reach an appropriate outcome.

Examples include:

- Mediations to resolve commercial disputes, such as the removal of confidential information from a business by former employees; and
- Mediations involving family members, disputes over the validity of wills and the adequacy of gifts for the purpose of the Inheritance (Provision for Family and Dependents) Act 1975.

Company

Nathan advises and appears in company law matters, including shareholder and director disputes.

Nathan has also represented clients in the Companies Court in London.

Insolvency

Nathan regularly deals with all aspects of corporate and personal insolvency litigation including:

- Administration orders (including pre-packs), extensions of administrations and applications by administrators for permission to distribute;
- Pursuing and defending significant claims against directors arising out of insolvent companies, e.g. for breach of duty to the company / unlawful dividends etc.;
- Claims involving preferences, transactions at an undervalue and other recovery proceedings;
- Representing insolvency practitioners in claims brought to challenge the validity of proofs and their decisions on them;
- Representing companies and individuals in winding up petitions, applications to set aside statutory demands and bankruptcy petitions; and
- Advising on insolvent estates, including how to deal with them and making applications for insolvency administration orders in respect of the estates of deceased persons.

Examples of cases include:

- (2019) Advising a director on a £350,000 claim for allegedly misappropriated monies;
- (2019) Advising on and drafting a claim to lift the moratorium imposed by an administration order, to enable a landlord to forfeit the lease of a commercial property;
- (2018/19) Advising and representing a director in a £400,000 claim for allegedly misappropriated monies;
- (2018) Obtaining an insolvency administration order in respect of the estate of a deceased person, where there were significant claims that an insolvency practitioner wanted to investigate;
- (2018) Acting on behalf of a client to set aside a statutory demand for £200,000;
- (2017) Acting for a trustee in bankruptcy in a 2-day trial to recover possession of a property transferred to the bankrupt's father several years beforehand. The respondents claimed the property was held on trust from the outset;
- (2016) Acting for a director in the Companies Court in London who successfully resisted a claim by a liquidator to recover over £200,000 following the liquidation of a company. Reported as *Re Bridgegate Communications Limited* [2016] EWHC 2085 (Ch);
- (2016) Acting for a trustee in bankruptcy in a 3-day hearing in a dispute over the ownership of a property said to be held on trust;
- (2015) Acting for an administrator in an urgent application in the Chancery Division of the High Court to determine the validity of his appointment under a floating charge;
- (2015) Advising and acting for an individual who faced a statutory demand for £320,000 as a result of trying to leave a tax mitigation scheme, which allowed investors to offset their tax liabilities against investments in well-known films;
- (2013) Acting for a lender in an appeal before the Vice Chancellor against a bankruptcy order made on the basis of a £400,000 personal guarantee. The case considered the amount of weight that should be given to admissions made during a bankruptcy petition and whether or not they could be withdrawn;

- Advising and drafting a certificate of law explaining the combined effect of EC Regulation 1346/2000 on Insolvency Proceedings and English insolvency law on an overseas property held by a bankrupt in Spain, for a client to present to the land registrar in Marbella;
- Applying for administration orders, including for companies subject to pre-pack arrangements;
- Challenging the costs incurred by a trustee in bankruptcy;
- Acting for petitioning creditors, companies and individuals in contested winding up and bankruptcy petitions and applications to set aside statutory demands; and
- Acting for insolvency practitioners to recover assets, whether by orders for possession and sale, setting aside void or voidable transactions, or conducting private examinations of debtors.

Partnership

Nathan advises and appears in company law matters, including shareholder disputes. Nathan has also represented clients in the Companies Court in London.

Examples include:

- (2019) Representing a shareholder in a dispute over whether the correct procedure had been followed to call a general meeting and pass resolutions to remove a director;
- (2019) Appearing for a company that sought to withhold information from disclosure to shareholders in the High Court;
- (2018) Representing a company in an unfair prejudice petition to ensure its position was adequately protected by a share buy-back proposal;
- Applying for and obtaining permission to rectify the terms of a debenture, alter its priority and to effect registration out of time;
- Advising a company on whether privileged legal advice could be withheld from members;
- Advising on and appearing in claims by shareholders claiming unfair prejudice;
- Advising on and restoring companies after dissolution; and
- Advising on and acting in medical and farming partnership disputes.

Private Client, Trusts and Probate

Nathan regularly undertakes work dealing with the administration of contested estates, including claims for financial provision and challenges to the validity of wills and associated trust instruments, including:

- Advising and representing clients in challenges to wills based on undue influence and lack of capacity;
- Advising and representing clients in relation to claims by cohabitants and other dependants under the Inheritance (Provision for Family and Dependents) Act 1975;
- Advising on the removal of executors and the rectification of a wills;
- Obtaining and investigating estate accounts; and
- Advising on procedure under the non-contentious probate rules.

In January 2019, Nathan was invited to speak to STEP Chester on the law of undue influence as it applies to lifetime gifts and the making of wills and proposals for reform. In previous years, Nathan has presented seminars on how to deal with insolvent estates (2018) and proprietary estoppel (2017).

Examples of cases include:

- (2019) Drafting a claim for an order under the non-contentious probate rules to remove a caveat without consent;
- (2018) Acting for a trustee / executor in a property dispute where two sets of beneficiaries sought different relief;
- (2018) Advising on the rectification of a will;
- (2018) Applying for and obtaining an order that a will was valid following a trial on written evidence;
- Advising on, drafting proceedings and representing clients in probate claims where the validity of one or more wills is challenged on the grounds of undue influence and/or lack of capacity;
- Representing one of several adult children in a multi-party dispute over the construction of a will and a claim for maintenance under the Inheritance (Provision for Family and Dependents) Act 1975;

Professional Negligence

Nathan has been instructed in a wide range of substantial, high-value professional negligence work relating to solicitors, surveyors, valuers, architects and accountants.

Examples include:

- (2018/19) Acting as junior counsel in a £7 professional negligence claim arising out of the drafting and negotiation of a shareholder agreement. Led by David Casement QC;
- (2018/19) Representing a solicitor for alleged negligence in a claim arising out of a multi-million-pound property development;
- (2017/18) Acting on behalf of a firm of architects who were accused of negligently managing a build;

- Advising and acting for a major high street bank in a claim for the negligent valuation of 3 properties at around £1.05m;
- Drafting proceedings, advising and appearing in claims for and against solicitors;
- Advising on claims against mortgage and insurance brokers and valuers.

Real Estate Litigation

Nathan has considerable experience of all forms of property litigation, including: mortgages and mortgage fraud, possession claims, landlord and tenant claims, adverse possession, boundaries and easements, claims arising out of the sale and purchase of properties, the right to manage, orders for sale and TLATA.

Nathan has successfully represented clients in multi-day trials involving property rights and appears before the First Tier Tribunal (Property Chamber) and the Leasehold Valuation Tribunal where he has represented individuals, groups of residents and management companies.

Nathan also has extensive experience acting for lenders and borrowers in mortgage litigation, including bridging finance and peer-to-peer lenders, and presents an annual seminar on mortgage law.

Examples of recent / reported cases include:

- (2019) Acting on behalf of a Cypriot development company in the Commercial Court in London in a dispute over alleged representations made prior to the sale of more than 30 properties. Led by David Casement QC;
- (2019) Obtaining a declaration in the High Court that a property was subject to a constructive trust and should be transferred to the applicants rather than vest as bona vacantia in the Duchy of Lancaster;
- (2018) Acting for the grantee of an option in a trial before the First Tier Tribunal that concerned the validity of an option agreement over 2 properties valued at £2.4m. Reported as *Trivelles Grand Limited v Gill* (REF: 2017/1076).
- (2018) Acting for a landlord in a dispute with a leaseholder over the terms upon which a lease of units in a significant commercial centre in London should be renewed. The 2-day trial had implications for the renewal of other leases in the centre;
- (2018) Acting on behalf of an applicant in 4-day trial before the First Tier Tribunal in which she sought the removal of a mortgage from the register of title for her property on the ground that it had been obtained fraudulently by a third party;
- (2018) Advising a mortgage company on the recovery of significant monies under a legal charge where the borrower had passed away and his estate was insolvent;
- (2018) Acting for a commercial tenant in a dispute with its landlord over repairing covenants and the terms of a lease and whether or not the landlord was able to resist an application for a new lease under the Landlord and Tenant Act 1954;
- (2018) Opposed an interim injunction to restrain the sale of a property by a borrower;
- (2018) Acting for a national developer in a dispute over the interpretation of the terms of a shared equity scheme;
- (2017) Representing the applicants at a 2-day hearing in the First Tier Tribunal (Property Chamber) in which they were seeking an order for the alteration of the register of title of their property to remove a legal charge that had been obtained by fraud. Reported as *Abdul Farooq (1) Surya Begum (1) v Kensington Mortgage Company Ltd* [2017] UKFTT 230 (PC);
- (2017) Representing the owner of a commercial property in a 4-day trial, which resulted in the recovery of the premises from third parties operating a business and who claimed a right to occupy had arisen from an informal lease and/or as a result of proprietary estoppel;
- (2017) Representing the owners of a penthouse flat in a dispute with their management company over the construction of the repairing obligations in a lease. Reported as *Glengarry Management Company Limited v David Barker (1) Susan Barker (2)* (First Tier Tribunal);
- (2014) Appearing on a 2-day appeal in a commercial dispute in the Chancery Division, which involved an acrimonious dispute between co-owners of farmland worth around £500,000;
- Appearing before HM Adjudicator in a dispute over a sham trust deed; and
- Appearing on behalf of approximately 20 residents of a housing development who wanted to replace their management company.

Technology & Construction

Nathan has successfully represented clients in multi-day trials in the Technology and Construction Court. His technical background gives him an edge when dealing with expert evidence or claims with a scientific element.

Memberships

Chancery Bar Association

Northern Chancery Bar Association

Northern Circuit Commercial Bar Association

British and Irish Commercial Bar Association

Publications

Nathan has published several articles in leading scientific journals, including *Physical Review Letters*.

Qualifications

- 2006/2007 Bar Vocational Course. Graded: Outstanding (ranked 1st in year).
- 2005/2006 Graduate Diploma in Law. Graded: Distinction (ranked 1st in year),
- 2001/2005 Atomic & Laser Physics DPhil, Oxford University
- 1997/2001 Physics MPhys, Oxford University (1st class)

Recommendations / Awards

'His strengths are his attention to detail and being excellent on paper; he is a quality advocate.' **Legal 500 2021**

Lincoln's Inn Student of the Year (ranked 1st in year)

Wales & Chester Circuit Award

Oxford University Press Award

Lord Denning Scholarship

Buchanan Prize & Hardwicke Scholarship#

Other Career Details

2004/2005 Nathan was a lecturer in Physics at St. Peter's College, Oxford.

Nathan has also published several articles in leading scientific journals, including Physical Review Letters.

