

# Marc Brittain

**Year of Call:** 1983

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## Overview

Marc is an experienced commercial and chancery practitioner. His broad litigation and advisory work covers most areas of the law normally litigated in the Chancery and Queens Bench Division, including:

- Company law and partnership
- Shareholder disputes
- Corporate and personal insolvency
- Breach of Contract

Furthermore, Marc has developed a practice acting for lenders and in particular short-term bridging lenders and mortgage/civil fraud related disputes. He has also recently acted for Defendants in a number of complicated 'land banking' claims brought in the Chancery Division by the Financial Services Authority.

Marc has also been a High Court Examiner for the purpose of litigation in the United States of America and has appeared in the Privy Council on appeal from the New Zealand Court of Appeal as well as advising in the Isle of Man on a case involving British litigants and Her Majesty's Customs and Excise.

## Academic qualifications

BA (Business Law)

## Professional bodies

Chancery Bar Association

# Expertise

## Commercial

Marc's practice covers a broad range of chancery and commercial litigation and he has substantial experience in both litigation and advisory work. In particular, Marc's practice covers high value contractual disputes, insolvency & bankruptcy and company related disputes with an emphasis on partnership and shareholder disputes, fraudulent/wrongful trading and breach of director's duties.

Marc has developed a particular expertise in acting for lenders and in particular short-term bridging lenders and mortgage/civil fraud related disputes.

He has also recently acted for defendants in a number of complicated 'land banking' claims brought in the Chancery Division by the Financial Services Authority.

Marc has also been a High Court Examiner for the purpose of litigation in the United States of America and has appeared in the Privy Council on appeal from the New Zealand Court of Appeal as well as advising in the Isle of Man on a case involving British litigants and Her Majesty's Customs and Excise.

### Current Work

- Acting in a number of substantial linked cases proceeding in the High Court involving claims in which the claimants are suing for the return of money allegedly paid to the defendant for the purchase of property in Dubai, alleging fraudulent misrepresentation by D.
- A substantial case proceeding in the High Court in which C, a Kuwaiti, is claiming a right to 'trace' money into a property purchased by D in this jurisdiction.
- A case proceeding in the Chancery Division of the High Court involving the use of alleged 'confidential information' obtained from the husband by the wife in which the husband is seeking to injunct the wife from using the material in family proceedings.

### Recent Cases

- County Leasing Asset Management Ltd & 5 ors v Mark Glenn Hawkes [2015] CA
- Wingfield Financial Heritage v Ikeji [2015] High Court QBD
- Acting for the claimant lender in several hearings before Chancery judges and QB
- Masters in a claim in which issues of 'default penalty interest' arose
- Elliott Green (as liquidator of Ice Commercial Developments Ltd) v Singh [2014]
- ChD (Manchester District Registry)
- Acting on behalf of a former director of the company and successfully resisting a claim for damages for wrongful trading
- Foreprime Properties Limited v Cheval Bridging Finance [2014] ChD
- Successfully representing the defendant in a claim where the claimant alleged sale by the defendant mortgagee in possession of property at an undervalue
- Martha Khan v Samir Bashir [2013] EWHC 957 QB
- Freezing order/striking out claim
- Grunwick v Dhanak & Perera [2012] EWCA Civ 1250
- Acting for one of the defendants (D) in a trial that lasted over 2 weeks and then in the Court of Appeal. P was employed by G in their silver recovery department. He sold silver flakes to D, D did not pay and P sued D. G found out about the claim and joined into the claim, alleging that the silver flakes had been stolen from them by P. D successfully raised the defence

of 'illegality' to resist P's claim. G succeeded against P but did not pursue D.

### Notable Cases

- **County Leasing Asset Management Ltd & 5 ors v Mark Glenn Hawkes [2015] EWCA Civ 1251** – Acting for the successful appellants in this case, in which the Court of Appeal has provided guidance on the principles applicable to the Court's discretion, when making an order for the restoration of a dissolved company, to order that the period of dissolution should not count for limitation purposes: aka a 'limitation direction'.
- **Wingfield Financial Heritage v Ikeji [2015] High Court QBD** – Acting for the claimant lender in several hearings before Chancery judges and QB Masters in a claim in which issues of 'default penalty interest' arose.
- **Elliott Green (as liquidator of Ice Commercial Developments Ltd) v Singh [2014] ChD (Manchester District Registry)** – Acting on behalf of a former director of the company and successfully resisting a claim for damages for wrongful trading.
- **Foreprime Properties Limited v Cheval Bridging Finance [2014] ChD** – Successfully representing the defendant in a claim where the claimant alleged sale by the defendant mortgagee in possession of property at an undervalue.
- **Martha Khan v Samir Bashir [2013] EWHC 957 QB** – Freezing order/striking out claim.
- **Grunwick v Dhanak & Perera [2012] EWCA Civ 1250** – Acting for one of the defendants (D) in a trial that lasted over 2 weeks and then in the Court of Appeal. P was employed by G in their silver recovery department. He sold silver flakes to D, D did not pay and P sued D. G found out about the claim and joined into the claim, alleging that the silver flakes had been stolen from them by P. D successfully raised the defence of 'illegality' to resist P's claim. G succeeded against P but did not pursue D.

## Property and Estates

Marc Brittain has a longstanding practice in advising and representing clients in court in property disputes, notably in 'mortgage' issues, especially in relation to sub-prime lenders.

His current caseload includes :

- a claim on behalf of a client who purchased a property, or at least he thought he did, only to find that the 'seller' was a fraudster – the issues are the same as in the fairly recent case of Dreamvar;
- a defendant in a "right of light" case – in which we have experts reports with differing modules and other complications;
- a case for a defendant property developer who charged his portfolio to a 'bridger', and where the 'bridger' has alleged a breach of the legal charge leading to receivers being appointed. Marc is in the process of applying for injunctive relief on the basis that although one of the properties was let out to a 'relative' within the meaning of the legal charge, the borrower was his client's company and a company cannot have 'relatives' within the meaning of the prohibition in the legal charge;
- a claim on behalf of another developer who purchased a property in a development in Manchester with a car parking space that is too small to fit a car into, thereby substantially reducing the value of the property;
- a dispute relating to service charges and rent arrears in relation to a property purchased at auction – construction of the lease and auction particulars; and
- a recent liability trial in which the landlord client had served a s.146 notice and then evicted the tenant. The validity of a s.146 notice and thereafter a quantum trial in which various issues were argued. Construction of the lease, election re mesne profits/lost business profits, how mesne profits were to be calculated (by reference to the rent paid under the lease or by reference to the rent at which the landlord was now advertising the premises), exemplary damages were all argued in the case.

He is variously instructed by both solicitors and on a direct access basis, by developers, commercial tenants and property professionals.

## Articles

The principle of 'no reflective loss' following the decision of the Supreme Court in *Sevilleja v Marex Financial*: an analysis by Marc Brittain and Mariya Peykova.

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The power of the Construction Industry and Training Board to impose levies under the Industrial Training Act 1982

3PB Commercial Barrister Marc Brittain and Pupil Barrister Mariya Peykova consider the conditions under which employers in the construction industry should have to pay a levy for the purpose of meeting the expenses of an industrial training board.

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Dealing with Competing Jurisdiction Clauses: What is your Centre of Gravity?

Marc Brittain and Mariya Peykova consider complex commercial arrangements and the difficulties they can create for parties where their obligations are set out in a multitude of related contracts or a single contract containing inconsistent dispute resolution clauses. Marc and Mariya explore the most common scenarios in which courts are asked to interpret inconsistent dispute resolution clauses, with particular focus on the 'centre of gravity' approach, adopted by courts.

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