



## Stephen Rubin QC

### Call date

1977

### Silk date

2000

### Practice Areas

Stephen Rubin specialises in commercial litigation and arbitration with a particular focus on advocacy. He specialises in litigation in the following areas:

- Civil Fraud
- Commercial litigation
- Banking
- Telecoms
- Share sale litigation
- Foreign exchange
- Professional negligence and regulation
- Evidence from and for foreign jurisdictions

### Recommendations (Practitioners' Guides)

"A man who has seen and done more than most, he is a redoubtable opponent" Chambers UK - Telecommunications 2011

Stephen Rubin QC earned praise from solicitors for his "pugnacious advocacy and dazzling intellect." Chambers UK Commercial 2011

"highly empathetic to his client's needs." Chambers UK Commercial 2010

"moves things along smoothly whilst displaying a tough streak." Chambers UK - Civil fraud 2010

"Reduces hostile witnesses to jelly with his cross-examination" Legal 500 - Commercial Litigation 2010

Chambers & Partners 2009 - Stephen is popular among solicitors as he is a "fighter with a great intellect."

"an impressive reputation across the Bar "well regarded." Legal 500 2007 - Civil Fraud



## Education

Merchant Taylor's School, Northwood  
Brasenose College, Oxford -MA Jurisprudence

## Prizes & Scholarships

Entrance Exhibition, Brasenose College, Oxford

## Languages

French

## Appointments

Recorder 2004  
Professional Conduct and Complaints Committee of Bar 1995-99  
Committee of London Common Law and Commercial Bar Association 2001-2004  
Bar Council Working Party on proposed Supreme Court 2004

## Professional Experience

Stephen Rubin specialises in advocacy particularly now in heavy commercial litigation in this jurisdiction and overseas. He has been the lead counsel in several long, complex, document heavy cases. As a Junior he had a wide variety of legal experience and at all levels. Being regularly in court from the start of his practice he has considerable experience of witness actions and in cross-examination and is well used to coping with the challenges presented by trials and major applications.

## Recent Practice

### Civil Fraud:

This is one of Stephen's main areas of work. He is recommended in Chambers & Partners and Legal 500.

**VTB Capital Plc -v- Nutritek International Corp & Ors [2011] EWHC 3107 (Ch):** appeared for Russian entrepreneur, Mr Konstanin Malofeev, in successfully challenging the jurisdiction of



the English courts to hear a \$350 million claim and in discharging a \$200 million worldwide freezing order.

The Claimant Bank (VTB Capital Plc) claimed that it had been deceived into entering a corporate finance loan facility with a Russian company, RAP.

It brought tort claims against Mr Malofeev and others in deceit and conspiracy and sought to 'pierce the corporate veil' of RAP so as to hold Mr Malofeev personally liable under the loan contract. In support of this latter argument the Claimant relied upon the recent decision of *Antonio Gramsci Shipping Corp v Stepanovs* [2011] EWHC 333 (Comm).

The Court heard 6 days of oral argument, further to which:

- (1) Mr Justice Arnold gave a landmark ruling on the law applicable to piercing the corporate veil, holding that *Antonio Gramsci* had been wrongly decided and that the Mr Malofeev could not be held liable under the loan contract.
- (2) The Court declined jurisdiction in relation to the claims in tort accepting the Defendants' submissions that the natural forum was Russia.
- (3) The Court concluded that, even if there was jurisdiction, the worldwide freezing order should be set aside (and not re-imposed) because there was no sufficient risk of dissipation of Mr Malofeev's assets and additionally because the Claimant had been guilty of material non-disclosures when obtaining the order *ex parte*.

The case is now the subject of an appeal.

Stephen Rubin QC and James McClelland were instructed by Justin Michaelson of SJ Berwin LLP.

**Digicel Limited v Cable & Wireless plc:** 5 month trial in Chancery Division in 2009 -2010 – heavy and complex claim of conspiracy to injure, breach of statutory duty, dishonest practices – telecoms market in Caribbean - LTL 17/6/2009, LTL 21/4 2010, [2010] EWHC 774 (ch) <http://www.thelawyer.com/able-and-wired/1000349.article>

**The Wahr - Hansen litigation:** Grand Court, Cayman Islands, 2004-2009, heavy and complex fraud and breach of trust litigation in the Cayman Islands. Stephen as Counsel for the Claimants was the leading counsel of a team of 4 counsel and several law firms. See <http://www.thelawyer.com/never-ending-story/134678.article> - Preliminary trial 2006 on foreign revenue issue – judgment for Claimants [2007] CILR 2007]

**BNP Paribas v (1) TH Global Ltd (2) Spinaker Ltd (3) Kvaerner 2004 (No.2) Ltd** [2009] EWHC 37 (Ch) LTL 19/1/2009 - limitation on scope of pre-action disclosure of certain documents under Norwich Pharmacal jurisdiction



Cinar Corporation v Panju LTL 3/11/2006 – major Canadian corporate fraud – recent injunction proceedings in England..

Lloyds Realty Development v Sofer (2006) – civil fraud and joint venture development agreement

Campden Hill Ltd v Chakrani & others (2005) NPC 652 – forgery and fraud in relation to mortgage – tracing – damages

Saab v Jones Day [2002] LTL 5/12/2002 – 5 week trial in Chancery Division concerning inter alia fiduciary duties of advisors <http://www.thelawyer.com/litigating-circumstances/98758.article>

First American v Sheikh Zayed Al Nahayan [1999] 1 WLR 1154, and Pharaon v BCCI [1998] 4 All ER 455 – fraud litigation in USA concerning also UK and Cayman arising from collapse of the First American Bank

Den Norske Bank v Antonatos [1999] QB 271 – banking fraud – leading case on search and freezing orders and related matters

Tuvyahu v Swigi QBD LTL 26/10/98 – fraud and international law

2005/6 – working on proceedings in relation to very large international fraud concerning Saudi Arabia, Far East and Switzerland

Experience of and good knowledge and connections to Gulf and Middle East

## **Commercial Litigation and Arbitration:**

Recommended in Chambers & Partners and Legal 500.

Digicel Limited v Cable & Wireless plc: see civil fraud above

euNetworks v Abovenet – Briggs J - LTL 9/1/2008 – contractual construction - private dictionary – specific performance and rectification – London Fibre Optic Network dispute

KPMG LLP v Equity Trust 2007 – Commercial Court – merchant banking negligence - trial 2007

Miller & Moody v Condor Insurance [2006] 1 WLR 1847 – see Banking and Finance below

The Wahr - Hansen litigation: Cayman Islands, 2004-2008; see above Civil Fraud



Campden Hill Ltd v Chakrani & others (2005) NPC 652 see above Chancery

Pedley v Avon Insurance plc LTL 31/7/2003 – Insurance – non-disclosure/misrepresentation

Den Norske Bank v Antonatos [1999] QB 271; see Banking and Finance above

BOC plc v Centeon Inc [1999] 1 All ER (Comm) 970 - leading case on guarantees and construction of contracts.

IPC v Middlesborough F.C. [2002] QBD Mistake and non est factum in contracts – sporting image rights exploitation

Seguin v UBS A.G. [2002] Comm Ct – see Banking and Finance below

Saab v Jones Day [2002] LTL 5/12/2002; see Banking and Finance below

## **Commercial arbitration:**

Stephen has acted and advised in several substantial commercial arbitration and has been appointed as an arbitrator. Experience in Silk includes:

Currently instructed by the Claimants in on-going arbitration in London concerning city-wide fibre-optic network.

Sole Arbitrator in heavy multi-million insurance and banking arbitration in London. Instructed by Claimants in substantial Brussels arbitration (Belgian and UK arbitrators) concerning fraud and warranty claims arising from share purchase agreement on take-over of industrial corporation

Instructed by Claimant in Commercial Court challenges to award under Sec 67 and 68 of the Arbitration Act.

Instructed by the Respondents in substantial LCIA arbitration in London concerning film production, sales and distribution (subject to Danish and English Law).

Instructed for developers in substantial arbitration against utility company relating to large housing developments.



## **Other commercial work**

Share sale litigation – Stephen specialises and regularly acts, advises and talks on share sale litigation; examples can be given if required.

Previously lead Counsel in, inter alia, substantial Commercial Court claim for commission arising out a major oil and gas project in Azerbaijan, music business management dispute involving major recording artist.

## **Banking & Finance:**

KPMG LLP v Equity Trust 2007 – trial Commercial Court – merchant banking negligence.

Miller & Moody v Condor Insurance [2006] 1 WLR 1847, [2006] 1 All ER 934 – this is the leading case on corporate finance/loan note guarantees by way of deed poll. Stephen acted for the successful claimants.

Campden Hill Ltd v Chakrani & others (2005) NPC 652 – this case examines several issues including tracing in equity through client account and extortionate credit bargains. Stephen acted for the successful claimants.

Sequin v UBS A.G. [2002] Comm Ct – This case concerned forex trading. Stephen acted successfully for UBS.

Saab v Jones Day [2002] LTL 5/12/2002 – This trial concerned corporate finance in the Middle East and the duties owed by advisers.

First American v Sheikh Zayed Al Nahayan [1999] 1 WLR 1154 - this case concerned the collapse of First American Bank in the USA and auditing issues. Stephen also acted in the mirror applications in the Cayman Islands. The immediate issue in England was obtaining evidence from Price Waterhouse employees.

Ata v American Express (1996) – A very complex 6 week forex trial in the Commercial Court.

Stephen conducted almost all of this trial and carried out all the examination and cross-examination of witnesses.

Recently advised major clearing bank on standard terms for guarantees and major corporation on banking regulatory issues.



## **Chancery:**

Stephen appears regularly in the Chancery Division and is well acquainted with its procedures and practices. He has conducted 2 full trials and several substantial applications in that division in the last 12 months.

Digicel Limited v Cable & Wireless plc: 5 month trial in Chancery Division in 2009 -2010 – heavy and complex claim of conspiracy to injure, breach of statutory duty, dishonest practices – telecoms market in Caribbean - LTL 17/6/2009, LTL 21/4 2010, [2010] EWHC 774 (ch) <http://www.thelawyer.com/able-and-wired/1000349.article>

euNetworks v Abovenet – Briggs J - LTL 9/1/2008 – contractual construction - private dictionary – specific performance and rectification – London Fibre Optic Network dispute  
The Wahr-Hansen litigation: Cayman Islands, 2004-2008; ongoing heavy and complex fraud and breach of charitable and other trust litigation in the Cayman Islands. See above under Civil Fraud.

Miller & Moody v Condor Insurance [2006] 1 WLR 1847 corporate finance guarantees by way of deed poll – see above Banking and Finance

Petrol Limited v Industrial Investment Fund LTL 15/3/2006 – rectification and land options  
Campden Hill Ltd v Chakrani & others (2005) NPC 652 – trial in Chancery Division - equitable tracing and extortionate credit bargains

Saab v Jones Day [2002] LTL 5/12/2002 – 5 week trial in Chancery Division concerning inter alia fiduciary duties of advisors.

Benyon v Tristram Development Ch D (2006) – ongoing litigation concerning joint venture and land development.

## **Commodities:**

Expertise in foreign exchange litigation including as examples the following commercial court cases:

Sequin v UBS A.G. [2002] Comm Ct - see above Banking and Finance

Ata v American Express Comm Ct -Rix J. - 7 October 1996 - see above Banking and Finance



## **Consumer Law:**

Consumer Credit Act advice given on various issues ranging from exempt agreements to extortionate credit bargains – see also Campden Hill Ltd v Chakrani & others (2005) NPC 652 under Chancery above.

## **Conflicts of laws and Private International:**

Good knowledge and court experience of conflicts of laws and jurisdiction issues

Recent 2 week trial in Cayman Islands of preliminary issue of conflicts law concerning the application of the rule against Foreign Revenue claims to fraud claims by insolvent taxpayer against non-taxpayer defendant – The Wahr –Hansen Litigation see under Chancery ore Civil Fraud above

Tuvyahu v Swigi QBD LTL 26/10/98 Lindsay J - Irangate Arms litigation in England – jurisdiction and forum non conveniens )

Tuvyahu v Swigi QBD Laws J LTL 26/10/98 – enforcement of foreign judgments

## **Employment:**

Stephen was regularly instructed as a Junior in employment law cases including and Industrial disputes. Details of cases can be supplied. Recent experience of springboard injunctions and wrongful dismissal claims

## **Evidence to and from foreign jurisdictions:**

Stephen specialises in problems relating to gathering evidence for and from foreign jurisdictions. He has extensive experience of both incoming and outgoing Letters of Request and foreign subpoenas He has been involved in several of the leading modern cases on Letters of Requests from US courts and has presented applications or appeared in connection with the taking of evidence in England, Cayman and Canada and advised on letters issued from Norway.

Land Rover North America v Windh QBD LTL 29/3/2005 contested Californian Letter of Request



First American v Sheikh Zayed Al Nahayan [1999] 1 WLR 1154 C.A. contested applications for evidence following Letters of Request from Washington DC District Court trying fraud claims connected to BCCI

Pharaon v BCCI [1998] 4 All ER 455 – BCCI related - NY District Court subpoena in banking case

Seguin v UBS Comm Ct - see above under Banking and Finance – Letters of Request to Singapore

Advice to major bank US bank with English branch on US District Court subpoenas

## **Financial Services:**

Recent involvement in FSA enforcement against City institution.

Recent advices on FSMA in relation to deposit-taking, e-money and forex

## **Insurance & Reinsurance:**

Experience of advising on various aspects of insurance law and policy points and avoidance issues. Recent reported cases:

Pedley v Avon Insurance plc LTL 31/7/2003 – non-disclosure/misrepresentation

Campden Hill Ltd v Chakrani & others (2005) NPC 652 see above under Chancery – follow up issues relating to costs liability of insurers- professional Indemnity insurance – avoidance

## **Land and Landlord and Tenant:**

Petrol Limited v Industrial Investment Fund LTL 15/3/2006 – rectification and land options

Campden Hill Ltd v Chakrani & others (2005) NPC 652 – Indemnities under Land Registration Act - rectification of Land Registry entries following forgery of mortgage - fraudulent mortgage deed.

Tustian v Johnstone [1993] 3 All ER 534 C.A – leading case on the model clauses/arbitration  
Past experience as a Junior in a number of Landlord and Tenant matters particularly concerning commercial and agricultural property and milk quotas; advised recently with specialist Junior on construction issues on commercial lease for major law firm



## **Media & Entertainment:**

Experience of artist/management litigation.

IPC v Middlesborough F.C. [2002] QBD - trial concerning exploitation of image rights of leading Brazilian footballer

## **Partnership:**

Extensive experience of partnership, quasi-partnership and joint venture issues both in advisory and litigation contexts

## **Professional Discipline:**

Instructed on behalf of the Law Society for several years with extensive experience of Interventions in Solicitor' practices. Several unreported cases and also Dooley v Law Society The Times Law Reports 16 January 2002 Dooley v Law Society (No 2) The Independent Law Reports 4 February 2002 and

Litigation and advices in relation to the Solicitors' Compensation Fund

## **Professional Negligence:**

Experienced at professional negligence cases. Numerous cases involving solicitors, accountants and surveyors. Recent reported cases include:

Campden Hill Ltd v Chakrani & others (2005) NPC 652 see Chancery above

Saab v Jones Day [2002] LTL 5/12/2002 solicitors' negligence in corporate finance transaction

Finance for Mortgage v Farley & Co [1998] 2 PNLR 145 surveyors and solicitors' negligence - date of knowledge

Currently acting in pending trial of claim against one of the 'big four' accountancy firms arising out of advice which it gave concerning the disposal of various shopping centres through a collective investment scheme.



**Sport:**

IPC v Middlesborough F.C. [2002] see commercial litigation above

**Telecoms:**

Recommended in Chambers & Partners.

**Digicel Ltd v Cable & Wireless plc**: see civil fraud above

**euNetworks v Abovenet**: see commercial litigation above

**Other Experience:**

Criminal experience as young Junior in criminal fraud, Courts-Martial and other serious crime and more recently sitting as Recorder in the Crown Court.

Expert evidence on English Law for foreign courts:

Written opinion on English law for in the Estate of Anders Jahre v Lazards and others - Sandefjord District Court, Norway 2000

With former Law Lord preparing expert report and evidence for California District Court - 1998

Toronto, Canada - cross-examining witness pursuant to Letter of Request from Norwegian Court 1999

Expert witness - Oslo Business Court - interim measure in support of ICC arbitration - September 2007