



Thomas Evans

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## Thomas Evans

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Thomas Evans has recently advised, drafted pleadings and argued (at trial and on appeal) across of a broad spectrum of commercial and banking issues ranging from directors' guarantees to misrepresentation by a solar energy firm and from breach of a contract for the provision of encryption software to harassment by financial institutions.

Thomas also receives instructions across a wide range of product liability and consumer protection issues, including in group actions. His recent work has included advising in multi-million pound factory fire cases and he has co-authored the latest edition of Hodges on Multi-party Actions.

Much of Thomas' practice has an international element, with issues of jurisdiction frequently arising. Thomas regularly acts for global banking institutions including those domiciled outside of the UK. He has also recently advised a foreign car manufacturer on issues of consumer protection. Notably, he has been published on the recast Brussels Regulation.

Thomas has a particular depth of experience in regulatory, transactional and contentious matters arising out of the Financial Services and Markets Act 2000 as well as the Regulated Activities Order, the FCA Handbook and the Consumer Credit Act 1974. He is routinely asked to advise on applications to the FCA for authorisation and to draft credit and security agreements. Thomas is a regular contributor to the Journal of International banking and Finance Law and is the lead author for the present edition of the Encyclopaedia of Forms and Precedents, Consumer Credit as well as being an author of Goode, The Law and Practice of Consumer Credit. Allied to this work, he regularly appears in insolvency proceedings as well as property and construction claims.

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# Commercial

Thomas has considerable experience in commercial litigation arising out of both contractual and tortious disputes.

Thomas is regularly instructed to draft credit and security agreements and to advise on the enforceability of credit agreements within the context of due diligence.

## Representative Cases

- *Bruce v TTAM [2015] EWHC 936 Ch (ongoing)*  
Alleged multi-million pound fraud in the valuation of a company prior to share sale by outgoing director; claim struck out and reinstated on appeal; alleged concealment of documents; whether claim an abuse of process by seeking to go behind a non-speaking determination (led by Patrick Green QC).
- *Resort Group v MJEA (Queen's Bench Division)*  
£20m loss of profit and liquidated damages claim under property portfolio acquisition agreements and guarantees.
- *Chemistree Homecare Ltd v Roche Products Ltd (Chancery Division, Court of Appeal)*  
Permission to appeal granted and appeal settled; costs orders upon discontinuance following interim injunctive relief; indemnity costs; relevance of other proceedings concerning same claimant; payment on account of costs pending detailed assessment; relevance of proceedings before European Commission which may be stifled by costs order.
- *Megaprinter.co.uk v Baldreed Digitec Limited & Or (Queen's Bench Division)*  
Hire of copying equipment; alleged breach of maintenance agreement; liability of finance company; application to strike out claim; quantification of damages.
- *HSBC Bank PLC v Ertan*  
Guarantees given by company director and secured on property; chain of guarantees linking group collective net overdraft facility to guarantor; allegations of misrepresentation.
- *In re Smart Energy*  
Numerous claims against solar water heating company; alleged misrepresentation concerning efficiency and monetary savings; liability in dispute; issues as to rescission and quantification of alleged loss.
- *Santander Cards UK Ltd v Greaves & Momentum Networks Ltd*  
Non-party costs order made against claims management company Credit Card Killer – control by claims management company of client's defence to debt claim – attempt to profit from litigation – application to adjourn due to concurrent criminal proceedings refused.
- *O v B (parties confidential)*  
Failure of encryption software supplied for use with Blackberry mobile devices; loss of profit.
- *O v Z (parties confidential)*  
Provision of SDSL broadband services with inadequate access line speeds for secure video conferencing;

loss of profit.

## Product Liability & Group Actions

Thomas is regularly instructed in matters arising out of allegedly defective plant equipment, white goods and commercial vehicles, as well as negligently carried out utility servicing.

He regularly provides opinions for insurers, manufacturers and creditors and is experienced in dealing with complex issues of expert evidence and high value claims for loss of profit both at trial and in ADR.

### Representative Cases

- *PIP Breast Implants*  
Instructed to advise a creditor on liability.
- *Factory fire*  
Defective gas burner.
- *Factory fire*  
Defective wiring.
- *Tractor fire*  
Release of hydraulic fluid and electrical fault.
- *Defective consumer vehicle*  
Metal fatigue.
- *Defective agricultural vehicle*  
Failure of safety systems trapping and injuring operative.
- *Microwave gel pack*  
Explosion.

## Consumer

Allied to his product liability and health and safety expertise, a significant part of Thomas' practice is concerned with consumer protection. Thomas regularly advises clients facing investigation and enforcement action from regulators including the Financial Services Authority and local Trading Standards departments. Most recently, Thomas has acted for a manufacturer facing allegations of unfair trading and fraud being investigated by Trading Standards, and also for a creditor facing potential enforcement action following allegations of failing to treat customers fairly and of sending out misleading communication.

### *Instructions Include*

- Consumers alleging fraud by financial and pension advisors.
- Finance companies defending allegations of harassment during debt collection.
- A consumer in a claim arising out of alleged unconscionable dealing and misrepresentation by salesmen on visits to his home.
- A timeshare company concerning sales practices and compliance with the Consumer Protection from Unfair Trading Regulations 2008.
- A major UK creditor on liability arising out of misrepresentation in the sale of timeshare agreements.
- A major UK creditor on liability arising out of misrepresentation in the sale of solar energy equipment.

## Banking, Asset Finance & Consumer Credit

Thomas' practice is focused on banking, asset finance and consumer credit. He receives regular instructions on behalf of banks and other large financial institutions and his practice spans both transactional and regulatory work as well as litigation.

Thomas is the lead author for the *Encyclopaedia of Forms and Precedents, Consumer Credit*, and is one of a team of authors of *Goode, The Law and Practice of Consumer Credit*. He has recently published three articles in the *Butterworths Journal of International Banking and Financial Law*.

### *Transactional & Regulatory*

Thomas receives regular instructions to act for a number of City institutions on non-contentious matters which have recently included the following:

- Reviewing consumer credit agreements as part of several due diligence reviews in the context of assignment of book debts and company acquisition
- Obtaining authorisation under FSMA for a national office equipment company and applying to amend scope of authorisation for a leisure services provider
- Drafting applications for waivers from the FCA
- Advising a major City financial institution on remedying and reporting breaches to FCA
- Advising a major UK credit card provider on its debt collection procedures
- Drafting commercial secured loan agreements and guarantees and performance bonds
- Drafting regulated credit and hire purchase agreements as well as full suite precedents, including for a national hire company and Harley Street medical practice
- Advising on the extra-territorial effect of the CCA and FSMA
- Remedying historical errors in NOSIAs
- Advising on the MiFID, high net worth and business purposes exemptions

### *Litigation*

In addition to his non-contentious work, Thomas is regularly instructed in all stages of litigation. He frequently acts on behalf of creditors in debt claims arising out of asset finance agreements, mortgages and guarantees in which complex allegations of misrepresentation, undue influence, unconscionable dealing and discharge by variation are raised. Recently, he has defended cases of alleged harassment by large financial institutions arising

out debt collection activities. Thomas has recently been instructed in multiple claims arising out of the alleged mis-sale of interest rate hedging products.

## Representative Cases

- *Otoo v Barons Finance Ltd (in liquidation) (Chancery Division)*  
Part of the Barons Finance litigation; enforcement of multiple charges by joint liquidators where underlying debts arose out of unenforceable consumer credit agreements executed by the creditor without licence or authorisation.
- *Megaprinter.co.uk v Baldreed Digitec Limited & Or (Queen's Bench Division)*  
Hire of copying equipment; alleged breach of maintenance agreement; liability of finance company; application to strike out claim; quantification of damages.
- *HSBC Bank PLC v Ertan (Bromley County Court)*  
Guarantees given by company director and secured on property; chain of guarantees linking group collective net overdraft facility to guarantor; allegations of misrepresentation.
- *Claims by several schools*  
Unenforceability of hire agreements executed ultra vires local authority delegated powers.
- *FGA Capital v Hipwood*  
Meaning of "possession" in section 90 Consumer Credit Act 1974; vehicle seized by HMRC but hiree attempting to recover; whether vehicle was in hiree's possession.
- *Honda Finance Europe Limited v Erivona*  
Voluntary termination of hire purchase agreement; duty of hirer to return vehicle; definition of "control"; effect of injunction preventing hirer from accessing vehicle.
- *Santander Cards UK Ltd v Greaves & Momentum Networks Ltd*  
Non-party costs order made against claims management company Credit Card Killer; control by claims management company of client's defence to debt claim; attempt to profit from litigation; application to adjourn due to concurrent criminal proceedings refused.

## Property & Construction

Of recent note, Thomas has advised on disputes arising under JCT contracts, out of waste drainage issues across neighbouring residential land, breach of NHBC warranties, flooding, damage to buried utilities and demolition contracts. He has appeared on behalf of numerous litigants in both residential and commercial construction disputes, including in the Technology and Construction Court.

## Representative Cases

- *PL*  
Debt claim under JCT; allegations of breach of contract and staged payments being deliberately withheld to force the sale of properties at an undervalue.

- *ANA Construction v Bowditch*  
Claim for damages under residential construction contract; multiple allegations of substandard work.
- *Apthorpe v Larkfleet Homes Ltd*  
Claim for substantial general damages for breach of NHBC warranties; residential property suffering defects requiring 18 months' remedial works with owners in situ.
- *Rajval Construction Limited v Bestville Properties Limited (TCC)*  
Long-running construction dispute.
- *Biffa Waste Services Ltd v Perfect Pressure Ltd*  
Contract to dredge lagoon at factory; damage to dredging equipment caused by unforeseen flooding of lagoon; liability for damage; loss of profit.
- *LKB Investments Ltd v Valley Consolidated Ltd*  
Efficacy of s146 notice; whether judgment in default in respect of service charges constituted a "final determination" within the meaning of s81 of the HA 1988.
- *D v D*  
Oral construction contract to build new residential property; claim in breach of contract / quantum meruit for non-payment; failure to retain invoices / proof of hours worked.

## Insolvency

Thomas advises financial institutions on a broad range of debt and insolvency issues. He regularly appears on appeal in the High Court and in both the Companies Court and County Courts at the setting aside, petitioning and annulment stages.

## Representative Cases

- *Otoo v Barons Finance Ltd (in liquidation) (Chancery Division)*  
Part of the Barons Finance litigation; enforcement of multiple charges by joint liquidators where underlying debts arose out of unenforceable consumer credit agreements executed by the creditor without licence or authorisation.
- *Direct Response Ltd (Chancery Division)*  
Application for injunctive relief and to strike out statutory demand as being wholly without merit; "freemen on the land" arguments considered.
- *1st Credit Finance v Anthony Adrian Carr [2013] EWHC 2318 (Ch)*  
Appeal against the annulment of a bankruptcy order; whether the Court was entitled to annul under s282(1)(A) IA 1986 where debtor produced disputed evidence of ability to pay only after the hearing of the petition; whether there was sufficient evidence that bankruptcy debts had been discharged for s282(1)(b) IA 1986.



- *Mr Sam Dias v London Borough of Havering* [2011] EWHC 172 (Ch)  
Appeal concerning jurisdiction of the bankruptcy court to enquire behind a liability order; scope of “miscarriage of justice” exception.
- *In re William Cole* (ChD)  
Advised and drafted pleadings on appeal to the High Court; definition of “unreasonableness” in IA s271(3); appeal settled.
- *Pickard v Atta-Owusu*  
Appearing for the trustee in bankruptcy; application for declaration of bankrupt’s beneficial interest in property; setting aside transaction at undervalue.
- *In re Henley Interiors Limited*  
Advised on the application of the rule against double proof following *Re Kaupthing*.
- *In re Ali*  
Advising mortgage on the scope of IA s339 and s342, the power of the Court to set aside transactions at an undervalue and, in particular, the protection afforded to third parties acting in good faith.

## Information Technology

Thomas’ commercial practice encompasses disputes arising out of IT and communications infrastructure contracts, in particular in B2B scenarios where significant loss of profit is alleged.

### Representative Cases

- *C v W*  
Installation of VOIP hardware; loss of profit.
- *A v B*  
Failure of encryption software supplied for use with Blackberry mobile devices; loss of profit.
- *O v Z*  
Provision of SDSL broadband services with inadequate access line speeds for secure video conferencing; loss of profit.

## Non-domestic Rates

Thomas regularly advises on disputed issues of liability to pay non-domestic rates. He appeared in the case of *Dias v Havering* and is experienced in challenging determinations and liability orders on behalf of businesses.

### Representative Cases

- *Mr Sam Dias v London Borough of Havering* [2011] EWHC 172 (Ch)  
Appeal concerning jurisdiction of the bankruptcy court to enquire behind a liability order; scope of “miscarriage of justice” exception.
  - *Preview v London Borough of Hounslow*  
Application to set aside liability order for non-domestic rates successful four years after being made.
  - *Test Valley Borough Council v XDP Ltd*  
Shared premises; meaning of “exclusive occupation”.
  - A  
Advised concerning charitable use and exemption.
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## Publications

- Author: Hodges, Multi-Party Actions
- Contributor: Journal
- Author: Encyclopaedia of Forms and Precedents, Consumer Credit
- Author: Goode, The Law and Practice of Consumer Credit
- Contributor: LexisNexis PSL Notes

## Memberships

- COMBAR
- South Eastern Circuit
- Health & Safety Lawyers’ Association
- Personal Injuries Bar Association

## Education

- Cholmeley Studentship, Lincoln’s Inn
- Hardwicke Award, Lincoln’s Inn
- John V Lovitt Prize in Jurisprudence, Christ Church, Oxford
- Scholarship, Christ Church, Oxford
- MA (Oxon) Jurisprudence, Christ Church, Oxford