

Bajul Shah

Call: 1996

He has a very measured advocacy style and has an incredibly good calming influence. That sort of calm, measured style he has cuts through the nonsense.

Chambers & Partners High Net Worth 2023



Bajul Shah has a broad commercial Chancery practice covering aviation, arbitration, commercial litigation, civil fraud, company, insolvency, hedge-funds, and trusts and probate disputes.

He has particular experience of disputes from the BVI, Anguilla, Cayman, Cyprus, Gibraltar, Guernsey, Jersey, and the Isle of Man.

Expertise

Arbitration

Arbitration plays a significant role in Bajul's practice. He has been involved in some extremely high profile and complex arbitrations, both domestic and international.

For example, he was instructed in the **Econet Wireless International -v- Vee Networks [2005]** arbitration. This arose out of the setting up and operation of a GSM mobile phone network in Nigeria. He was also involved in **AHV -v- Energis [2005]**, a telecoms arbitration involving the setting up a Carrier Pre-Selection and Wholesale Access system in Northern Ireland. There were also claims regarding entitlement to ongoing payments.

Aviation & Travel

Recommended for a considerable time by Legal 500 and Chambers & Partners, Bajul's cases usually involve complex, engineering-heavy negligence and product liability claims, and lease liability claims. He also has considerable experience of airline disputes. The legal directories comment that he: **"is very experienced in aircraft matters, which makes him very able when it comes to aircraft injunctions and commercial disputes with an engineering angle."**

His recent cases include:

- (1) Mahan Air (2) Blue Sky Airways Co FZE v Blue Sky One Ltd & Ors 2011 EWCA Civ 544: a court can still apply to conditions even after leave to appeal has been granted. A party wishing to oppose security for costs must make full and frank disclosure of all its lines of finance both direct and indirect eg shareholders, ability to raise credit etc

- Blue Sky One Ltd & Ors v Blue Airways: A claim for the delivery up of 3 Boeing 747-400 aircraft against an Iranian Airline, the dispute turning on whether the aircraft were acquired as a front for an Iranian airline in an attempt to get around US sanctions on Iran. Currently in trial.
- Currently also advising two aircraft lessor groups in relation to claims against the guarantors of the lessees who defaulted on aircraft lease payments.
- JSD v Al Waha: A claim for the return of deposits paid under a Letter of Intent for the purchase of an Airbus A320 aircraft. The judgment [2009] EWHC 583 contains an important discussion on Letters of Intent used generally in aircraft purchasing.
- Al Waha v LTE International Airways: Claims for delivery up of two aircraft by a UAE based lessor group against an insolvent Spanish airline.
- Neos v Aerosvit: A dispute over the lawfulness of an early termination of a charter arrangement between an Italian AOC holder and a Ukrainian airline.
- Sunrock Corp v SAS: A leasing dispute over the return conditions of two Boeing 767 aircraft. We were successful in the Court of Appeal whose judgment (reported at [2007] 2 Lloyd's Rep 612) is an important case on the interpretation of financial adjustment clauses in return conditions.
- Celtic Capital 22889 Corp v Nikon Airways: A claim against a Nigerian airline for repossession of an aircraft for non-payment under a conditional sale agreement. A twist was that the aircraft was in Ethiopia under the control of Ethiopian Airways. A claim against them is also outstanding for conversion.
- Air Namibia v BCI: Aircraft lease dispute involving two Airbus A340-300 aircraft, the issue being how the maintenance reserves paid by Air Namibia (the lessee) should be dealt with under the lease.
- BCI v Swiss: An aircraft lease dispute involving an Airbus A330 aircraft over non payment of maintenance reserves and the issue of how such reserves were to be dealt with by the lessor.
- Air Niugini: This case concerns the failure to deliver a Boeing 767 aircraft and the consequential damages.
- Clubair: Bajul advised a supplier of spare parts to Clubair when the latter was facing insolvency in Italy.
- Bristow Helicopters -v- Sikorsky Aircraft Corporation [2004] EWHC 401 (Comm): A claim for over £10m arising out of the crash of a Sikorsky S76A+ Helicopter in the North Sea in July 2002, due to the failure of one of the rotor blades.
- Emerald Airways -v- Rolls Royce [2004]: A product liability claim arising from the uncontained failure of an engine on a Hawker Sidley HS-748 aircraft.
- Wells Fargo -v- Polar Air [2004]: Claims arising out of a lease a Boeing 747 cargo aircraft. The dispute centred on whether the return conditions, particularly in relation to the engines, had been satisfied by the lessee.
- Laura Leasing Ltd -v- BAE Systems Regional Aircraft Limited and Aircraft Braking Systems Corp [2003]: Product liability and negligence claim for \$21m cost of repairs to an Airbus A340 which crash landed at Heathrow Airport due to landing gear failure when a torque pin fell out during take off from Los Angeles.
- Air Foyle Ltd -v- Center Capital Ltd [2003] 2 Lloyd's Rep 428: Dispute as to ownership of Russian registered Antonov 124-100 cargo aircraft. The case involved questions of validity of competing titles under Russian and Dutch law.
- Stolkin -v- Sloane Helicopters & Agusta [2003]: A negligence claim against the repairer of a helicopter following a crash. Issues of indemnity between the manufacturer and repairer and conflict of laws were raised.
- Re Libyan Arab Airlines [2003]: Acted for ground handlers, who were major creditors of the airline, in insolvency proceedings against the airline.
- Lucas Aerospace Ltd -v- Secondo Mona SpA [2003]: Negligence claim arising from a defective artificial gravity amplifier

fitted into a BAE Hawk Mk 209 aircraft.

- Re Ghana Airways [2002]: Acted for a major creditor of the airline in insolvency proceedings including the appointment of provisional liquidators.
- Servisair UK Ltd -v- Canada 3000 Airlines Ltd [2001]: Acted on behalf of a ground handling company, which was attempting to preserve its position when one of Canada's largest airlines became insolvent in Canada.
- ABTA v British Airways, Virgin Atlantic and Lufthansa [2000] 2 Lloyd's Rep 209: High profile litigation acting on behalf of travel agents against airlines who were attempting to reduce travel agents' commission. The case involved the construction of the standard form IATA Passenger Sales Agency Agreement.

Civil Fraud & Asset Recovery

Bajul is a very experienced junior who engenders great loyalty from the clients he comes across. His fraud work brings recommendation in this area from Legal 500.

Recent cases include:

- Re Kingate: The two Kingate Funds were the second largest victims of Madoff's fraudulent Ponzi scheme. Bajul advised the funds on claims by putative shareholders on whether they had proprietary claims against the funds, and on possible claims against other investors. He acted for the funds in their winding-up proceedings in the BVI Courts. He was also appointed as amicus curiae in the BVI Courts when the liquidator of the Kingate Funds sought court approval for a settlement with the Madoff trustee.
- Re Vizcaya: This fund was another victim of Madoff's fraud. Bajul advised Harneys on various matters about whether the BVI Courts would recognise or enforce claims that the Madoff trustee might wish to bring.
- Re IKOS: The Ikos fund is a successful hedge fund set-up by a husband and wife team who, sadly, were now going through divorce proceedings in a number of jurisdictions i.e. Monaco, Greece and Cyprus. Bajul was acting for the wife in relation to various Cyprus trusts that were at the centre of the dispute between the husband and wife. Among the issue which Bajul had to deal with were possible constructive trust/tracing claims by the husband, and also whether the husband had been guilty of wrongful dealing with certain underlying assets.
- Re Claims 100 Limited: Bajul's client, who was a director and shareholder of the Claims 100 Ltd company, discovered that the company had been "stolen" from him when another director had unlawfully issued a share to his own business partner and appointed him a director. Bajul succeeded in obtaining injunctions to prevent the other side from acting as a director or shareholder.
- Credit Suisse: A borrower from Credit Suisse sought to force a debt reduction on Credit Suisse by allegedly paying monies to a third party company (owned in part by the borrower) supposedly to repay a loan not previously disclosed. This fraudulent attempt to force a debt reduction resulted in novel proceeding in the BVI but the parties have now reached settlement.
- TG Investments: This case involves claims of fraud and misappropriation relation to a joint venture to develop a marina in Grand Bahama.
- Turnquest v Jones & Ors: Turnquest systematically sought to deprive Bajul's clients of assets of fraudulently transferring assets (which consisted of various insurance policies) of various subsidiary companies to companies controlled by Turnquest. Bajul's clients were seeking to set-aside the wrongful transfers and to trace into the assets.
- The President of the State of Equatorial Guinea v Fist System Design & Ors (Settled during House of Lords Hearing): This case involved novel claims brought by Equatorial Guinea to recover damages for losses said to have arisen as a result of

an attempted coup. The claims were struck out as being non-justiciable in the English Courts.

- Yaakov Klein: Mr Klein thought that he was making loans to a friend to help him with his business; in fact the friend used the money to fund his lifestyle and then refused to repay them.
- Karim Lalani & Ors v South African Airways: The Lalanis were the victims of a travel agent fraud (or "bust out") whereby they were sold first class tickets heavily discounted by an agent who then disappeared with the money. South African Airways refused to honour the tickets so the Lalanis sought recovery of what they had paid.

Commercial Litigation

Bajul has extensive experience in commercial litigation both in the Commercial Court and in the Chancery Division as well as in arbitration. His practice has recently focused on telecommunications litigation, especially involving technical issues, and civil fraud cases. Recent cases include:

- Blue Sky & Anor v Mahan Air & Ors [2010] EWHC 128 (Comm): deliberate conduct by a individual or company official which is not accidental and in knowledge of the facts rendering the conduct a breach of the relevant order will result in an order for contempt.
- PK AirFinance v Chartis & Ors, Blue Sky One v Chartis & Ors [2010]: This action involved claims under an insurance policy for the 3 Boeing 747-400 aircraft that had been converted by the Iranian airline. The insurers denied cover on the grounds of material non-disclosure and misrepresentation and counterclaimed for an indemnity.
- Bank of Scotland v United Breweries Holdings Ltd: This case involved a claim by a security trustee for a group of syndicated lenders against UBH under a guarantee which it had provided for the debts of its subsidiary, Kingfisher, the well known Indian airline. The claim involves issues of penalties.
- Tarkin AG v Thames Steel UK: This is a claim under a guarantee in relation to a contract for steel scrap from a company in the Republic of Georgia. Bajul acted for the defendant guarantor.
- Hillside v Baasland: This case involves a dispute between an online gambling company and a Norwegian customer who lost millions on the online gambling and is now alleging various claims in tort against the company.
- SJ Philips v Mrs Philion: In this case, Bajul acted for the well known Bond Street jewellers who were suing a former customer for unpaid jewellery in circumstances where she was evading service.
- Re Kingate: The two Kingate Funds were the second largest victims of Madoff's fraudulent Ponzi scheme. Bajul advised the Funds on claims by putative shareholders on whether they had proprietary claims against the funds, and on possible claims against other investors.
- Re Grand Prix/Bundora: Bajul acted with Alan Steinfeld QC in relation to a highly novel claim by a BVI company to impose a unilateral debt reduction on various Credit Suisse lender entities. The case involved novel issues of BVI law.
- National Westminster Bank Plc v Horrocks: This case involved a novel issue over whether a deposit of share certificates created a valid security for a debt or whether it was unenforceable by virtue of the Statute of Frauds.
- Slocom Trading Ltd v Tatik Inc, Sibir Energy Plc: Bajul advised on issues of BVI and Isle of Man law in relation to security over shares.
- Re Brightsea EOL Ltd – Debt Restructuring: Bajul was involved in advising on particular issues which arose in a debt restructuring of its debenture stock.
- JSB v Al Waha: This case concerned the recoverability of various deposits paid under a Letter of Intent agreement between the vendor and purchaser of an aircraft.

- **Breathe Networks Ltd v Jones:** This was a fraudulent misrepresentation claim arising from the sale of shares in a internet service provider company. Bajul obtained proprietary and freezing injunctions against the delinquent fraudsters. The case eventually settled on terms.
- **Turnquest v Britannia:** Turnquest systematically sought to deprive Bajul's clients of assets by fraudulently transferring assets (which consisted of various insurance policies) of various subsidiary companies to companies controlled by Turnquest. Bajul's clients were seeking to set-aside the wrongful transfers and to trace into the assets.
- **TGI v NHH:** This was a claim arising from the breakdown of a joint venture involving the development of a marina in the Bahams. Bajul acted for the defendants who faced claims under promissory notes.
- **The President of the State of Equatorial Guinea v First System Design & Ors (Settled during House of Lords hearing):** Claims by Equatorial Guinea to recover damages for losses said to have arisen as a result of an attempted coup. The claims were struck out as being non-justiciable in the English Courts.
- **Compagnie Noga D'Importation et D'Exportation SA -v- ANZ [2005]:** Complex dispute arising out of the disposal on the international debt market of Nigerian promissory notes that were previously held by entities in USSR and later Russia. The claims are for over US\$700m. Bajul is acting for various defendants who were associated with the former ruler of Nigeria, General Sani Abacha.
- **Econet Wireless International -v- Vee Networks [2005]:** Telecoms arbitration arising out of the setting up and operation of a GSM mobile phone network in Nigeria.
- **AHV -v- Energis [2005]:** Telecoms arbitration involving the setting up a Carrier Pre-Selection and Wholesale Access system in Northern Ireland. There were also claims regarding entitlement to ongoing payments.
- **Hill Street & Ors -v- Garrard [2004] :** This litigation related to a bid back in 1986. Unfortunately that one incident has spawned a number of cases of which this is the latest. Crucial to this particular matter were the offshore arrangements of the partners to the bid. The parties were from Liechtenstein, Jersey and England so the inter-relationship of the various governing laws was vital.
- **Pershing Securities Ltd -v- S P Bell Ltd [2004]:** Claims arising from the collapse of a firm of brokers who had been engaged in market abuse by "ramping-up" trading in certain shares listed on AIM.
- **MW Newport Ltd -v- Axa Corporate Solutions [2004]:** Claims against an insurer and an insurance broker arising out of the theft of a cargo destined for humanitarian aid in Somaliland.

Company

Bajul's company law practice involves both advisory work as well as litigation involving directors' duties and indemnities, shareholders disputes, share sales, pre-emption rights, and reduction of share capital. Recent cases include:

- **Re Minerva plc [2005]:** Bajul was advising the company in relation to directors' indemnities (and the recent changes to the Companies Act) arising out of the collapse of the Allders Group.
- **Econet Wireless Ltd -v- First Bank of Nigeria PLC [2004]:** Dispute between shareholders arising from the setting up and operation of a GSM mobile telephone network in Nigeria.
- **Re TransTec plc 2000-2003:** An investigation under s.432 of the Companies Act into the affairs of TransTec plc after its high profile collapse. The investigation was very wide reaching and was conducted over approx three years. Bajul assisted the Inspectors.
- **Re Ransomes Jacobson PLC :** Case involving a complex reduction of share capital for a public limited company.

- *Fattouche v The Lebanese Republic* [2006]: A case concerned with the enforcement in England of judgments and orders obtained in Lebanon against the Lebanese Republic. The case involves issues of *res judicata* and sovereign immunity.
- *Re Litigation Opinion* [2007]: Bajul advised on the issues of enforcement of judgments and sovereign immunity in relation to a joint venture project that involved a sovereign state.
- *Re B* [2007]: This case arose from the forced sale of a director's shares in a company with a successful internet business in circumstances where the director was dismissed for wrongdoing.
- *Turnquest v Jones* [2008]: This action in the Bahamas arises out of the attempt by a director of companies offering offshore investments in insurance products to take over the subsidiary companies and their underlying assets. Bajul has acted for the companies in their claims against the director.

Hedge Funds & Structured Investment Vehicles

- *Bank of Scotland v United Breweries Holdings Ltd*: This case involved a claim by a security trustee for a group of syndicated lenders against UBH under a guarantee which it had provided for the debts of its subsidiary, Kingfisher, the well known Indian airline. The claim involves issues of penalties.
- *Wallis Trading v Air Tanzania & Government of Tanzania*: This case involves, inter alia, a claim under a guarantee provided by the government of a sovereign state i.e. Tanzania, and raises points about state immunity and enforcement.
- *PK AirFinance v Blue Sky Two & Ors*: Part of the Blue Sky litigation, but this involved a discrete dispute between Bajul's clients (the mortgagors of 2 aircrafts) and the mortgagee under a complex lending structure. The issues which were in dispute included (a) whether the lending was non-recourse; (b) whether the mortgagee's charge extended over damages for conversion; (c) question over the ambit of the receivers appointed by the mortgagee; (d) whether the mortgagee owed any duty of care to subordinated lenders and whether it had breached them; (e) whether the mortgagee had contractual and misrepresentation claims against the mortgagors under the various financing documents. This aspect has now settled.
- *JSB v Al Waha*: This case concerned the recoverability of various deposits paid under a Letter of Intent agreement between the vendor and purchaser of an aircraft. Bajul acted for the vendor.
- *Re Kingate*: Bajul advised this BVI based hedge fund (which invested in Madoff) on various claims arising from the Madoff fraud, and acted for it on its petition for liquidation. He was also appointed *amicus curiae* to the BVI Court in relation to the liquidator's application for court approval of a settlement of claims made by the Madoff trustee.
- *Re Grand Prix/Bundora*: Bajul acted with Alan Steinfeld QC in relation to a highly novel claim by a BVI company to impose a unilateral debt reduction on various Credit Suisse lender entities. The case involved novel issues of BVI law.
- *Tarkin AG v Thames Steel UK*: This is a claim under a guarantee in relation to a contract for steel scrap from a company in the Republic of Georgia. Bajul acted for the defendant guarantor.
- *National Westminster Bank Plc v Horrocks*: This case involved a novel issue over whether a deposit of share certificates created a valid security for a debt or whether it was unenforceable by virtue of the Statute of Frauds.

Insolvency

Bajul's practice includes administration petitions, liquidations, bankruptcies, IVAs, disputes involving securities. Recent cases include:

- Re Pepperpot Direct [2005]: A dispute arising out of the exercise of a lien over stock when a company went into administration.
- Frost v Thompson [2005]: Claims arising out of the unlawful siphoning of funds following dissolution of a partnership of insolvency practitioners.
- Re Global Marine Systems Ltd [2004]: Acting in relation to the pension scheme, which had a considerable deficit, when the employer company went into administration.
- Re Libyan Arab Airlines [2003]: Bajul acted for ground handlers, who were major creditors of the airline, in insolvency proceedings against the airline.
- Antoinette Pozutto & Maria di Iulo -v- Christopher M Iacovides [2003] EWHC 431 Ch: The question in issue was whether the Registrar's order setting aside the transfer from the bankrupt to his wife and daughter as a transfer at an undervalue was correct.
- Re Ghana Airways [2002]: Bajul acted for major creditors of the airline in insolvency proceedings against the airline, including the appointment of provisional liquidators.
- Servisair UK Ltd -v- Canada 3000 Airlines Ltd [2001]: Bajul acted on behalf of a ground handling company, which was attempting to preserve its position when one of Canada's largest airlines became insolvent in Canada.
- Jay Benning & Pelz -v- Brian Deutsch [2001] BPIR 510 Ch: The case considered the interrelation between the Insolvency Rules and the CPR on the exercise of discretion.

Pensions

Bajul is regularly involved in a number of pension related matters. Pension work is another area in which he was previously recommended by Legal 500. Some of his recent cases include:

- Re NSM Group Pension Scheme [2007]: A dispute on the proper interpretation of the Winding-Up Regulation and their effect on the distribution of assets in a pension scheme where the employer had gone into administration and there was a deficit in the pension scheme. Bajul acted for the deferred pensioners.
- Retirement Annuity Trusts [2007]: Bajul advised beneficiaries of two Retirement Annuity Trusts established in Guernsey under Guernsey law over whether the trustees had been negligent in the investments which they had made.
- Re X [2007]: Bajul has been advising in relation to the pension scheme of a major union on whether its increases in pensions are discriminatory.
- Re Z [2007]: Bajul advised on whether a divorced wife's estate can claim its share of her former husband's pension under a Pension Sharing Order in circumstances where she had not finalised where she wanted the money to go before she died.

Trusts, Probate & Estates

Bajul's practice involves both advisory work and litigation on matters such as the appointment and removal of trustees; trustees costs and expenses; Beddoes applications; claims for constructive trusts, tracing, dishonest assistance and knowing receipt; probate disputes. Bajul is recommended in this area by both Legal 500 and Chambers & Prs.

Recent cases include:

- *X v Y* [2007]: a breach of trust claim by a beneficiary against the trustees of a Jersey trust based on allegation that the investment decisions favoured the income beneficiary above the capital beneficiary, and that a distribution was improperly made to one of the trustee-beneficiary. Bajul acted for one of the trustees.
- *Re A & B Trusts* [2007]: a complex dispute arising because assets of an English law trust with a Bahamian trustee and administered from Switzerland were “exported” to a trust established in Switzerland but with a Bahamian trustee and governed by Bahamian law.
- *Re T J Mathew Will Trust* [2007]: an acrimonious dispute over the removal of trustees of a multi-million trust fund where there was hostility between the beneficiaries and between the trustees. Bajul acted for the defendant trustees.
- *Re Iris Carlson, deceased* [2007]: a dispute over whether a bequest of a house to a charity was charitable, what the terms of the gift were, and whether it could be varied by the sign manual procedure. Bajul acted for a charity to whom the bequest was made.
- *Re Ward* [2007]: a claim by charitable beneficiaries over the administration of an estate against the executor. Bajul acted for the charities.
- *Richardson v Morley* [2007]: a dispute over a lost will and whether the presumption of revocation applied. Bajul acted for charities who were beneficiaries of the estate under an earlier will.
- *Harfeld v Blades* [2007]: an Inheritance Act claim by a live-partner on behalf of herself and her infant son. Bajul acted for the infant son on the approval of the settlement by the court.
- *Arthur v Arthur* [2008]: a case involving a claim to set aside a lease and a settlement entered into under a mistake in the context of an unworkable and ill-thought out Inheritance tax saving scheme. Bajul acts for the children who are beneficiaries under the settlement.
- *Re Sanderson* [2008]: an Inheritance Act claim by husband involving a high value but illiquid estate and a complicated will. Bajul acts for the husband.

Academic History

- Christ Church, Oxford, BA BCL (First Class)
- Denning, Wolfson & Hardwicke Scholar of Lincoln’s Inn
- Previously a lecturer in Land Law at King’s College, London

Professional Memberships

- ChBA (The Chancery Bar Association_
- European Circuit
- Insolvency Lawyers Association
- Member of the Bar of Gibraltar

- Member of the Bar of the British Virgin Islands

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