

Winston Jacob



Winston specialises in property, commercial and insolvency litigation. He provides advice, drafting and advocacy to clients across these specialisms. He has appeared as sole counsel at all levels up to and including the Supreme Court. On 8 February 2024, Winston appeared for the Respondent RTM company in the Supreme Court in *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd*, which is likely to prove an important authority on statutory interpretation and failures to comply with statutory notice procedures. The appeal challenges the Court of Appeal decision in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] Q.B. 571, in which Winston appeared for the successful Appellant. Winston regularly appears in the High Court, the County Court, the Upper Tribunal and the First-tier Tribunal in petitions, applications and trials.

Winston also has experience in professional disciplinary proceedings. He regularly advises and represents the Bar Standards Board before the Bar Disciplinary Tribunal and the Interim Suspension Panel. He also represents it on appeal in the High Court in relation to appeals against findings of professional misconduct and/or sanction and before the Appeal Panel in relation to appeals against administrative sanctions.

Please click on a specialism link below for more details of his experience in the relevant practice area.

Winston is valued by his clients for his comprehensive advice and thorough preparation for court appearances. He has provided insolvency training to internal lawyers at the Bar Standards Board. He has provided lectures on various topics to solicitors, corporate lay clients and the judiciary. He edits the Tenant arrears and bankruptcy section of the RICS isurv website.

Winston accepts direct instructions on a public access basis.

He was appointed a Deputy District Judge on the South Eastern Circuit in May 2020.

His reported cases include:

- *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2023] UKUT 27 (LC); [2023] L. & T.R. 11: following *Elim Court v Avon Freeholds* [2017] EWCA Civ 89, the Upper Tribunal considered that an RTM company's failure to serve a claim notice on an



Year of Call: 2005

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intermediate landlord with no management responsibilities did not invalidate its claim, whether or not the failure was deliberate. The Supreme Court has given permission for a leapfrog appeal to determine whether *Elim Court* was wrongly decided.

- *Sturgiss v Boddy* [2022] L. & T.R. 12: tenancy deposit penalty claim under s. 214 of the Housing Act 2004 available to tenants who paid deposit to outgoing tenants rather than direct to landlord.
- *Yasin v Whitmore Law Solicitors* [2021] EWHC B30 (Costs); [2021] Costs LR 1219: Supreme Court Costs Office held that a client could request detailed assessment of a solicitor's gross sum bill under s. 64(3) of the Solicitors Act 1964 more than 12 months had passed since delivery of the bill and no special circumstances existed to justify assessment under s. 70(2)-(3).
- *Q Studios (Stoke) RTM Co Ltd v Premier Grounds Rent No. 6 Ltd* [2020] UKUT 197 (LC); [2020] H.L.R. 44: Upper Tribunal considered what constitutes a flat for the purposes of the Commonhold and Leasehold Reform Act 2002, s. 112(1), and when premises are occupied for residential purposes within meaning of 2002 Act, Sch. 6.
- *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] Q.B. 571: Court of Appeal considered the correct approach to non-compliance with statutory notice provisions in context of notices seeking the right to manage.

Feedback

'Thank you for your help in this multi track trial. The outcome was an unconditional victory, and the clients were very impressed with your performance. As they put it: 'we believe you all could not have fought harder for us and we certainly couldn't have wanted for any more. Winston was outstanding. He ran rings around the opposition': John Gordon, Partner, Wilson Browne Solicitors

'I recently instructed Winston in a complex property damage and boundary case. He provided invaluable advice throughout the process; in particular, on preparation of evidence and settlement offers. His most important contribution was his advocacy at trial. Winston was a highly effective advocate with a good understanding of the law and the complex factual background. He was able to use his knowledge deftly in cross-examination, including of an expert witness. We were able to achieve a great outcome for the client and an indemnity based costs award': Toby Walker, Head of Dispute Resolution, Hedges Law



'We are very grateful to Mr Jacob for his assistance and confirm that our client was very happy with the outcome':
Mary Rouse, Senior Associate, Wright Hassall LLP

'Winston was absolutely brilliant and we would very much like to keep him on board for the entirety of this case if at all possible': lay clients

Further information

Qualifications

- 2005 Called to the Bar (Middle Temple)
- 2004-2005 Bar Vocational Course (Very Competent)
- 1997-2000 Balliol College, University of Oxford, MA (Hons) in Jurisprudence

Memberships

- COMBAR
- Chancery Bar Association
- R3 Association of Business Recovery Professionals

Background

Before joining the Bar, Winston worked in the Commercial Litigation Department of Norton Rose and in the Insurance/Reinsurance Department of CMS Cameron McKenna. Before joining Chambers, he worked as a solicitors' agent, attending hearings on a daily basis in the County Courts and the Royal Courts of Justice in property, insolvency, consumer credit, contract and debt recovery matters.



Real Property

Winston regularly appears in the County Court and the High Court in a variety of actions and advises on all aspects of property law. He has particular experience of mortgages, including registration of mortgages, mortgagee's right to possession, tenants of borrowers, LPA receivers and mortgagee's costs.

His experience includes disputes over beneficial ownership of land (including applications under the Trusts of Land and Appointment of Trustees Act 1996), nuisance, trespass, and property-related professional negligence claims.



His property practice includes the following core areas:

- Boundary disputes, Party Wall etc. Act 1996 and adverse possession
- Easements
- Land Registration
- Mortgages and equitable charges (including charging orders)
- Professional negligence
- Restrictive covenants
- Trespass
- Trusts of land (express, constructive and resulting and TOLATA claims)

Examples of his work:

- *McGaan v South* [2017] EWHC 307 (QB): representing successful appellant in appeal against award of interest on respondent's share of proceeds of sale of property; consideration of date from which interest can run on sums due from sale of property the subject of a TOLATA claim.
- Advising and representing defendant in 7-day trial of dispute over beneficial interest in investment property including counterclaim for breach of trust and dishonest assistance
- Advising and representing claimant in 5-day trial involving conjoined harassment, debt and TOLATA claims with ownership of 4 properties in issue.
- Representing the successful claimants in a 5-day trial of a possession claim involving allegations of constructive/resulting trust and the application of the *ex turpi causa* principle.
- Representing the successful defendant in the 4-day trial of a boundary dispute involving Party Wall Act issues and a claim of substantial structural damage to a building. Obtained an indemnity costs award.
- Representing individual alleging beneficial interest in property pursuant to express, resulting or constructive trust and claiming breach of trust by co-owner; co-owner alleging that declaration of trust was a sham.
- Representing successful applicant in First-tier Tribunal on reference of her application to Land Registrar to cancel a registered charge on basis that the mortgagee's title had been extinguished by virtue of the Limitation Act 1980.

Landlord & Tenant

Winston is regularly instructed in landlord and tenant matters. He appeared for the successful Appellant in the Court of Appeal in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] Q.B. 571, a case



concerned with non-compliance with the statutory notice requirements in the right to manage legislation. The Respondent sought permission to appeal from the Supreme Court and Winston drafted notice of objection. Permission to appeal was refused.

His residential landlord and tenant experience encompasses claims involving all manner of tenancies, including assured and assured shorthold tenancies, secure tenancies, regulated tenancies under the Rent Act 1977, introductory tenancies and tenancies attracting no security of tenure.

He acts in possession claims (including forfeiture), service charge disputes, breach of covenant claims, and applications for antisocial behaviour injunctions.

He also acts in disputes involving business tenancies regulated by the Landlord and Tenant Act 1954, including business tenancy renewals.

His landlord and tenant practice includes the following core areas:

- Applications to commit for contempt of court for breach of injunction
- Breach of covenant (including disrepair)
- Business tenancy renewals under Part II of the Landlord and Tenant Act 1954
- Enfranchisement and right to manage
- Possession claims (including forfeiture, s. 21 Housing Act 1988, s. 8 Housing Act 1988, s. 83 Housing Act 1985, s. 127 Housing Act 1996, NTQ and trespass)
- Service charges
- Tenancy deposit disputes under the Housing Act 2004

Examples of his work:

- *AI Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* (UKSC 2023/0047): acting for Respondent as sole counsel in the Supreme Court on a leapfrog appeal from the Upper Tribunal. The Supreme Court is considering the correct test to statutory interpretation when a statute states that a certain procedure should be followed but does not state the consequences, if any, of a failure to follow the procedure. Judgment is awaited following a hearing on 8 February 2024.
- *AI Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2023] UKUT 27 (LC); [2023] L. & T.R. 11: representing successful respondent in appeal against decision that it was entitled to acquire the right to manage. The Upper Tribunal held that the RTM claim was not invalidated by the respondent's failure to give a claim notice to a landlord with no



management functions and both the fact that the respondent did not attempt service and its reasons for failing to serve were irrelevant. The Supreme Court has granted permission for a leapfrog appeal.

- *Q Studios (Stoke) RTM Co Ltd v Premier Grounds Rent No. 6 Ltd* [2020] UKUT 197 (LC); [2020] H.L.R. 44: representing successful applicant claiming the right to manage; consideration of what constitutes a flat for the purposes of Commonhold and Leasehold Reform Act 2002, s. 112(1), and when premises are occupied for residential purposes within meaning of 2002 Act, Sch. 6. Drafted statement of reasons why permission to appeal should be refused by Court of Appeal. Permission to appeal was refused.
- *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] EWCA Civ 89; [2018] Q.B. 571: representing successful RTM company in claim for determination that it was entitled to acquire the right to manage; consideration of the court's approach to non-compliance with statutory notice provisions.
- *Sturgiss v Boddy* [2022] L. & T.R. 12: acting for successful appellant tenants in tenancy deposit penalty claim; consideration of tenant "churns" resulting in implied surrender and regrant; penalty claim available to tenants who paid deposit to outgoing tenants rather than direct to landlord.
- Representing successful landlord in application under s. 20ZA of the Landlord and Tenant Act 1985 for dispensation of service charge consultation requirements relating to £2.4 million major works to block of flats.
- Representing former tenant's trustees in bankruptcy in successful application to set aside forfeiture and restore a long-lease to the register.
- Representing successful defendant tenant, both at first instance and on appeal, to a claim for possession on grounds of forfeiture due to rent arrears. The court accepted the defendant's argument that the 'costs of the action' within s. 138(2) of the County Courts Act 1984 were fixed costs under CPR Part 45 as opposed to indemnity costs.
- Representing landlord in an arbitration to determine the terms of a tenancy under the Agricultural Holdings Act 1986.

Commercial

Winston has a broad commercial litigation practice involving regular appearances in the County Court and the High Court. His experience includes sale of goods and services, bailment, agency, insurance and debt recovery.

He has extensive experience of commercial debt recovery proceedings. His clients include banks and other financial



organisations, insurance companies, partnerships and sole traders.

His commercial practice includes the following core areas:

- Commercial debt recovery
- Consumer credit agreements
- Finance agreements
- Guarantees and indemnities
- Insolvency (personal and corporate)
- Insurance
- Partnership disputes
- Professional negligence
- Sale and supply of goods and services
- Shareholder disputes

Examples of his work:

- *Rahman v Munim* [2024] EWCA Civ 123; [2024] All ER (D) 85: acting for Appellant in Court of Appeal on appeal against dismissal of unfair prejudice petition. Consideration of whether the trial was fair in light of judicial findings of fact that were un-pleaded and/or not fully explored in cross-examination.
- *Ahmed v Munim*: acting for appellant in appeal to Court of Appeal against High Court's dismissal of unfair prejudice petition. Drafted Amended Grounds of Appeal and supporting skeleton argument, following which permission to appeal was granted on all amended grounds. Appeal was settled after appellant obtained permission to appeal.
- *Aries Robotics Plc v Persons Unknown*: acted for Appellant seeking permission to appeal from Court of Appeal against discharge of interim injunction against alleged blackmailers. The appeal concerned the extent of the court's jurisdiction to maintain an interim injunction prior to service of the claim form. Drafted skeleton argument in support of request for permission to appeal, following which the Court of Appeal granted permission to appeal. The parties subsequently settled.
- *La Cotte Consulting Ltd v Sovereign Steel Stockholders*: appeal to Court of Appeal of indemnity costs order following trial. Permission to appeal obtained. Settlement reached shortly before appeal hearing due to take place.
- *La Cotte Consulting Ltd v Sovereign Steel Stockholders* [2021] EWHC 1517 (Ch): representing claimant claiming fraud, mistake, unlawful means conspiracy and procuring breach of contract in relation to allege scrap metal business joint venture, including 3-week High Court trial.
- *Yasin v Whitmore Law Solicitors* [2021] Costs LR 1219: representing successful claimant seeking detailed



assessment of solicitor's gross sum bill under s. 64(3) of the Solicitors Act 1964 where more than 12 months had passed since delivery of the bill and no special circumstances existed to justify assessment under s. 70(2)-(3).

- Acting for commercial property consultants in fee claim for over £600,000 for a business rates reduction service.
- Acting for unregulated lender in 3-day trial of claim for repayment of over £380,000 for bridging loan advanced on basis of declaration that intended for business purposes. Defence and Counterclaim alleging that agreement unenforceable under s. 26 of FSMA 2000 as a regulated mortgage contract; alternatively, an unfair relationship under s. 140A(1) of CCA 1974.
- Acting for claimant sub-contractor in claim for unpaid commission, estimated at between £100,000 to £300,000, for sales leads provided. Settled on favourable terms at the door of the court.
- Representing defendant partners in a partnership dispute involving a jointly-owned mixed use property worth around £265,000 rented out for profit. Dispute as to whether property should be sold on open market or the defendants permitted to buy out the claimant's interest at a valuation. Settled on favourable terms.
- Acting for commercial property consultants in quantum meruit claim for over £150,000 for services on aborted lease negotiation.
- Representing company director in High Court claim to rectify the register and for injunction against another director following alleged unlawful filings at Companies House terminating directors' appointments.
- Acting in claim on a home-insurance policy defended by insurer alleging claim forfeited due to insured's use of a fraudulent device.

Consumer credit

Winston provides representation and advice in claims involving all aspects of the Consumer Credit Act 1974 and related legislative provisions. He has represented banks and other financial institutions in claims relating to consumer credit and consumer hire agreements. His experience includes:

- Improperly executed regulated agreements
- Regulated hire purchase and hire agreements
- Regulated mortgages
- Unfair relationships (ss. 140A-C)

Examples of his work:

- Representing mortgagee in possession claim



defended on basis that the mortgage was unenforceable under s. 26 of the Financial Services and Markets Act 2000 as a regulated mortgage contract made by an unregulated lender. Reserved judgment is due to be delivered in January 2022.

- Representing different mortgagees in a number of possession claims defended, among other matters, on grounds that the agreement was an unfair relationship within the meaning of s. 140A of the 1974 Act
- Representing finance company in dispute with individual who hired a car on hire-purchase. Successfully obtained an order striking out allegations of misrepresentation, duress and improperly executed agreement made in the defence and counterclaim.
- Advising an unincorporated association regarding its potential liability under a regulated hire agreement.
- Drafting defence to a claim on a regulated hire agreement raising issues of enforceability of the agreement under ss. 86D and 87 of the 1974 Act.

Insolvency

Winston acts for creditors, debtors and insolvency practitioners in both individual and corporate insolvency proceedings.

He has considerable experience of personal insolvency, including statutory demands, bankruptcy petitions, annulment applications, and trustees' applications for the sale of property under s. 14 of the Trusts of Land and Appointment of Trustees Act 1996 (in conjunction with s. 335A of the Insolvency Act 1986).

He also acts in winding up petitions and related applications, such as for injunctions to restrain presentation or advertisement of a petition.

Winston also acts in cases where trustees in bankruptcy seek to assert their rights against third parties, such as persons who co-own property with the bankrupt.

His clients include banks and other financial organisations, insurance companies, partnerships and all manner of creditors.

Examples of his work:

- Obtained administration order on behalf of a company, enabling it to avoid a winding up order being made against it
- Successfully resisted application to set aside statutory demand for sums due pursuant to a property development related loan agreement where debtor alleged that debt disputed and that had a counterclaim that exceeded its value



- Obtained urgent injunction to restrain presentation of winding up petition in the Interim Applications Court on the basis that the alleged debt was genuinely disputed
- Appeared for creditors and debtors in various winding up and bankruptcy petitions
- *Pickard v Roberts* [2016] B.P.I.R. 996; [2016] EWHC 187 (Ch): representing bankrupt's wife and co-owner of property seeking to set aside order for sale in favour of trustee in bankruptcy obtained at hearing which she failed to attend; consideration of what constitutes a "trial" for the purposes of CPR r. 39.3.
- Acting for former tenant's trustees in bankruptcy in successful application to set aside forfeiture and restore a long-lease to the register.

Seminars/Training

Winston has provided insolvency training to the internal lawyers at the Bar Standards Board. He has provided lectures on various topics to solicitors, corporate lay clients and the judiciary.

Contentious Trusts and Probate

Winston is regularly instructed in claims relating to constructive and resulting trusts of land, including claims under the Trusts of Land and Appointment of Trustees Act 1996. He can offer advice and assistance in the following areas:

- Proprietary estoppel and constructive trusts
- Trusts of land and co-ownership
- Undue influence
- Claims under the Inheritance (Provision for Family and Dependants) Act 1975
- Claims by and against personal representatives and trustees

