

Winston Jacob

Winston specialises in property, commercial and insolvency litigation. He provides advice, drafting and advocacy to clients across these specialisms. Please click on a specialism link below for more details of his experience in the relevant practice area.

He has appeared as sole counsel at all levels up to the Court of Appeal and has drafted a notice of objection to permission to appeal in the Supreme Court. He regularly appears in the High Court, the County Court, the First-tier Tribunal and the Upper Tribunal in petitions, applications and trials. He appeared in the Court of Appeal for the successful Appellant in *Elim Court RTM Co Ltd v Avon Freeholds Ltd* [2017] H.L.R. 18; [2017] EWCA Civ 89.

He has particular experience of commercial debt recovery, personal insolvency, mortgage disputes and landlord and tenant.

His current cases include:

- An appeal to the Court of Appeal against an indemnity basis award of costs, concerning the effect of unsuccessful allegations of fraud on the basis of assessment
- An appeal to the Court of Appeal against the discharge of an interim injunction against alleged blackmailers, concerning the extent of the court's jurisdiction to maintain an interim injunction prior to service of the claim form
- A claim in the SCCO to an order for detailed assessment of a gross sum bill of costs under section 64(3) of the Solicitors Act 1974, concerning whether the court may order detailed assessment under section 64(3) without applying the restrictions of section 70.

Winston represents the Bar Standards Board before the Bar Disciplinary Tribunal and the Interim Suspension Panel. He has also taken part in the Chancery Bar's pro bono CLIPS scheme to assist litigants in person in the High Court.

He has provided insolvency training to the internal



Year of Call: 2005

Contact Practice Manager

Cliff Alderson

cliff@lambchambers.co.uk

020 7797 8303

VAT Reg No

109426913

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.

In certain circumstances, Winston accepts direct instructions on a public access basis.

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

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

Background

Prior to joining Chambers Winston 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.

He has also previously worked in the Commercial Litigation Department of Norton Rose and in the Insurance/Reinsurance Department of CMS Cameron McKenna.

Immediately after university, he spent one year as Editor of the Jersey Law Reports, reporting judicial decisions of the Jersey Royal Court and appeals to the Jersey Court of Appeal and the Privy Council in matters such as financial regulation, trusts, bankruptcy and insurance, as well as chronicling most important rulings on criminal law, procedure and evidence.

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] H.L.R. 18; [2017] EWCA Civ 89, 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:

- *Elim Court RTM Co Ltd v Avon Freeholds Ltd [2017] H.L.R. 18; [2017] EWCA Civ 89*: 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.
- *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.
- *Sturgiss v Boddy [2021] EW Misc 10 (CC)*: 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 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.
- Advising and representing numerous landlords

claiming possession under s. 21 of the Housing Act 1988 facing technical defences based on tenancy deposit legislation.

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:

- *La Cotte Consulting Ltd v Sovereign Steel Stockholders: appeal to Court of Appeal of indemnity costs order following trial*
- *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 alleged 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.
- Representing Defendant company in successful application for wasted costs of over £50,000 against the Claimant's solicitor.

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.