

## Winston Jacob

Winston specialises in property, commercial and insolvency litigation. He provides advice, drafting and advocacy to clients across these specialisms. He has appeared 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 and the County Court 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.

Winston prosecutes for the BSB before the Bar Disciplinary Tribunal. 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 lawyers at the Bar Standards Board. He has provided lectures on various topics to solicitors, corporate lay clients and the judiciary.

Winston edits the Tenant arrears and bankruptcy section of the RICS isurv website.

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

### 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



**Year of Call: 2005**

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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 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 purchaser in claim for specific performance of contract to buy land; defendant seller alleged misrepresentation and that the contract was void as contrary to the administration of justice.

## 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 on 18 July 2017.

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.
- 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.
- Advising and representing commercial landlord defending claim for relief from forfeiture.
- Representing landlord in an arbitration to determine the terms of a tenancy under the Agricultural Holdings Act 1986.
- Representing claimant landlord in 4-day trial of possession claim based on rent arrears and alleged breach of covenant not to part with possession; counterclaim for disrepair, nuisance and tenancy deposit penalty.
- 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:

- Acting for commercial property consultants in fee claim for over £600,000 for a business rates reduction service.
- 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 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.
- 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 recent insolvency 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



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