

TANFIELD

PROPERTY & REAL ESTATE BARRISTERS



James Hamerton-Stove

Year of call

2012

James Hamerton-Stove has a busy practice in the full range of Chambers' work. He focuses on property and general commercial / Chancery. He acts as sole counsel but is equally content being led and is currently instructed in the Court of Appeal (led by Kerry Bretherton KC).

He provides oral and written advice and advocacy at all stages of litigation, from pre-action advice to interim relief and through to trial.

James has an approachable manner but is also a robust advocate who fights his client's corner in court.

He is fully adept in the use of various technology platforms to conduct hearings and give advice.

Outside of Chambers, James is a keen (but not able) participant in tennis, golf and skiing.

Banking & Mortgages

James is particularly sought-after in this area. He is frequently instructed by banks, alternative lenders (especially providers of bridging and other short-term finance), and LPA receivers. He has wide experience of the sorts of defences typically raised, both under the applicable legislative schemes and otherwise, and how to counter them. He also frequently handles cases involving guarantors and joint borrowers.

Recently he has:

- Defended numerous attempts to set aside and suspend enforcement of possession orders on various

grounds in both the High Court and the County Court.

- Represented a lender in a dispute involving claims of undue influence arising out of an alleged failure to fulfil the requirements of *Royal Bank of Scotland plc v Etridge (No.2)*.
- Fought fully contested cases involving claims of unfair relationships.
- Acted for the mortgagee bank in defence of an application by unauthorised tenants to suspend a warrant for eviction under the Mortgage Repossessions (Protection of Tenants etc) Act 2010.

Residential Landlord & Tenant

James is currently instructed as junior counsel (led by Kerry Bretherton KC) in an ongoing matter before the Court of Appeal. He has a very busy practice as sole counsel in the full range of residential L&T issues, with a focus on possession and forfeiture.

Recently he has:

- Represented a national agency in a claim involving allegations of penalties, human rights defences and the jurisdiction to relieve from forfeiture of the benefit of a contract.
- Acted for landlords in numerous possession claims based on forfeiture of long residential leases on various grounds including non-payment of ground rent and service charges.
- Defended various claims arising out of the alleged defective construction of a block of newbuild flats in central London.
- Defended against possession of a residential property after an individual was fraudulently named as guarantor of a business lease.
- Drafted an application to (and subsequently appeared in a mediation at) the First-tier Tribunal (Property Chamber) for a determination of breach of covenant within a residential lease under the Commonhold and Leasehold Reform Act 2002.
- Advised on, drafted and represented the claimant in an application under the Landlord and Tenant Act 1954 for a declaration that a landlord had unreasonably withheld its consent to proposed alterations to residential property, contrary to s.19(2) the Landlord and Tenant Act 1927.

Commercial Landlord & Tenant

James acts for both landlords and tenants in a range of commercial property matters. He has particular experience of business lease renewal disputes involving the statutory grounds of opposition at s.30(1) of the 1954 Act. He is also frequently instructed on applications for relief from forfeiture.

Recently has has:

- Represented a government department in an attempt to renew a business lease defended on ground (f) of the Landlord and Tenant Act 1954.
- Defended an attempt by a major commercial tenant to remove an 'unoccupied area' from the ambit of a business lease renewal so as to limit the application to the extent of the 'holding' for the purposes of s.23 of the Landlord and Tenant Act 1954.
- Advised on the applicability of the anti-avoidance provisions of the Landlord and Tenant (Covenants) Act 1995 in relation to a guarantor providing a guarantee of an assignor's liabilities under an Authorised Guarantee Agreement (i.e. a sub-guarantee or 'GAGA') in connection with the assignment of a lease of commercial property in Soho, central London.
- Defended numerous applications for relief from forfeiture.

Leasehold Enfranchisement & Lease Extensions

James has a busy practice in leasehold enfranchisement and related issues under both the 1993 and 1967 Acts.

Recently he has:

- Acted in a dispute in the First-tier Tribunal (Property Chamber) over whether an application for collective enfranchisement was 'made' in time for the purposes of s.24(1) of the Leasehold Reform, Housing and Urban Development Act 1993.
- Advised numerous clients on the validity of initial notices served for the purpose of collective enfranchisement under s.13 of the Leasehold Reform, Housing and Urban Development Act 1993.
- Represented leaseholders in applications against missing landlords.
- Advised on how a plan should reflect appurtenant land for the purposes of an initial notice for collective enfranchisement.
- Advised on the proper service of an initial notice for collective enfranchisement during the height of the covid-19 lockdown.
- Successfully defended an application to release funds from the Court Funds Office to a BVI-registered company following collective enfranchisement.

Commercial Disputes

James accepts instructions in a wide variety of commercial disputes in either litigation or arbitration. He is

happy acting either as sole counsel or as part of a larger team. Most of his work involves an element of property law, but he is equally content working on purely commercial cases.

Recently he has:

- Advised vendors of a development site worth c.£2m on the issue of anticipatory repudiatory breach by a prospective purchaser (a property developer) under an option agreement.

Real Property

James acts in a wide range of real property cases involving easements, covenants, boundaries and party walls.

Recently he has:

- Successfully defended an application for permission to appeal in a case concerning an express declaration of trust and the distinction between proprietary estoppel and common intention constructive trusts.
- Advised on an implied easement arising by way of the rule in *Wheeldon v Burrows* / s.62 of the Law and Property Act 1925 / the parties' common intention after the construction of a second dwelling on a newly divided plot of registered land.
- Advised and appeared in numerous matters under the Trusts of Land and Appointment of Trustees Act 1996, including the determination of beneficial interests and orders for sale.
- Advised on the adverse possession of disputed land under both the old and new regimes (i.e. pre- and post- Land Registration Act 2002).

Service Charges

James is experienced in handling disputes over service charges, particularly Tribunal applications to determine liability and reasonableness.

Recently he has:

- Advised the leaseholders of a building in Knightsbridge, central London on a prospective challenge to a fixed service charge under the provisions of the Landlord and Tenant Act 1987.
- Advised on whether a specific bank account being used to hold service charges accorded with the requirements of s.42 of the Landlord and Tenant Act 1987 as defined by Part 4 of the Financial Services

and Markets Act 2000.

- Advised on the recovery of unpaid service charges incurred during the 'registration gap'.

Notable Cases

Toner v Telford Homes Ltd [2021] EWHC 516 (QB)

Grey GR Limited Partnership v Paca LON/00BG/LSC/2021/0135

MS v FS [2020] EWFC B9

Chevia Antony Allen (1) Property Network (KA SPV) Ltd v South London Ground Rents Ltd
LON/00AH/LSC/2019/0468

Matthews v Matthews & Anor [2018] EWHC 906

Recommendations

"I have instructed James on several occasions and his advice and performance have never been short of meticulous. I would recommend him without hesitation."

"The client was very pleased with the result."

"Brilliant"

Awards

- Queen Mother Scholarship (Middle Temple)
- Harmsworth Entrance Exhibition (Middle Temple)
- Bar Council Law Reform Essay Competition: Runner Up (CPE category, 2009)

Qualifications

- BA French and Philosophy, Magdalen College, University of Oxford
- GDL, Oxford Institute of Legal Practice
- BPTC, City Law School

Memberships

- Chancery Bar Association
- Property Bar Association
- Financial Services Lawyers Association

Languages

- Spanish
- French
- Basic Russian