

# TANFIELD

PROPERTY & REAL ESTATE BARRISTERS



## Niraj Modha

Year of call

2010

Niraj specialises in property and commercial litigation and arbitration.

Niraj frequently appears in the County Court as well as The Business and Property Courts, spanning matters in both the Chancery and Queen's Bench Divisions and in courts across England and Wales. He has a wealth of experience in the First-tier Tribunal (Property Chamber) and has appeared in the Court of Appeal as sole counsel and the Supreme Court.

## Arbitration

Niraj is a Member of the Chartered Institute of Arbitrators and in 2016 he was awarded a Diploma in International Commercial Arbitration.

Niraj has experience of international commercial arbitration, as follows:

- Acting as sole counsel in a domestic construction arbitration between a landowner and property developer valued at more than £2 million (ad hoc, London seat).
- Advising in an arbitration involving a commercial management dispute (ICC Rules, Doha seat).
- Assisting in an arbitration involving an East African government (ICC, Paris seat).
- Assisting in an arbitration between an Asian supplier and an African telecommunications provider (AAA Commercial Rules, New York seat).

Niraj has also advised recently on the enforceability of foreign judgments in England and Wales. Niraj has attended and delivered lectures at arbitration events and seminars, most recently in Rome (International Bar

Association Annual Conference) and Goa (ICC YAF South Asia Regional Conference).

Niraj accepts instructions in both domestic and international arbitration.

## Real Property

Niraj welcomes instructions across all aspects of real property and commercial – as well as residential – landlord and tenant law.

He has:

- Obtained declaratory relief and costs for homeowners in Suffolk following a dispute between neighbours relating to the nature and extent of an easement.
- Advised on claims involving proprietary estoppel.
- Advised in conference and drafted Particulars of Claim on behalf of homeowners in Essex in a claim involving allegations of trespass and adverse possession.
- Settled a Defence on behalf of a regulated tenant in a claim for possession by a landlord alleging trespass over land demised to him or annexed to his tenancy by way of encroachment.
- Appeared at a directions hearing for homeowners locked in a dispute over boundaries and easements.
- Settled Particulars of Claim for homeowners alleging trespass and damage to residential property.

## Landlord & Tenant

Niraj acts for property investors, developers, professional landlords, buy-to-let landlords, housing associations, management companies, residents associations, and commercial and residential tenants.

He has:

- Successfully represented a commercial tenant in a claim for breaches of the covenant for quiet enjoyment and the implied covenant on a landlord to prosecute an insurance claim with proper speed and diligence, resulting in damages for tens of thousands of pounds.
- Successfully represented a commercial tenant in a claim for a new lease under the 1954 Act which was opposed by a London Borough on the ground of redevelopment.
- Advised on and settled claims under the 1954 Act generally.
- Successfully acted on behalf of landlords and tenants in disrepair claims involving issues inter alia repudiatory breach, fitness for human habitation, and infestation.
- Advised, drafted statements of case, and successfully appeared at trial in claims involving succession

under the Rent Act 1977.

- Represented commercial landlords and tenants in claims for forfeiture, rent arrears, injunctions, and damages for harassment and unlawful eviction.
- Settled Particulars of Claim for a commercial landlord alleging pound breach (following distress) and wrongful interference.
- Successfully obtained injunctions on behalf of social landlords against tenants on grounds of anti-social behaviour, nuisance, and obstruction of access.
- Obtained possession orders for commercial and residential landlords against Rent Act, secure, and assured tenants.
- Secured interim possession orders and outright orders against trespassers of commercial units and residential properties in and around Greater London.
- Acted in claims involving tenancy deposits.
- Advised on the strategy, procedure, and effectiveness of notices under sections 8 and 21 Housing Act 1988, tenancy deposits, and possession claims generally.
- Assisted as junior to Philip Rainey QC in a claim alleging conspiracy and breach of statutory contract against a freeholder of land in London's West End (settled at trial).
- Drafted and advised on the validity of notices under section 13 and section 42 Leasehold Reform, Housing and Urban Development Act 1993, and missing landlord claims.
- Instructed at a multi-track directions hearing for the claimants in a high-value enfranchisement claim concerning property in Sloane Gardens, London.

## Banking & Mortgages

Niraj typically acts for mortgagees, receivers, and trustees in bankruptcy.

He has:

- Advised and represented a trustee in bankruptcy in proceedings involving buy-to-let property.
- Acted for receivers seeking possession against sub-tenants following the bankruptcy of the mortgagor landlord.
- Represented the registered proprietor in a four-day trial at Central London (Chancery List) seeking the setting aside of an alleged equitable charge and removal of a restriction at HMLR (settled on the first day).
- Acted on behalf of receivers seeking possession of residential property occupied by assured shorthold tenants claiming various legal and equitable rights.
- Advised on the principles of equitable charges in advance of a hearing before the Adjudicator to the Land Registry.
- Advised receivers on their powers under statute and mortgage instruments.

## Commercial Disputes

Niraj is familiar with applications for security for costs, strike out, and summary judgment. He has been instructed in multi-track and fast-track trials, as well as applications for relief from sanctions, interim payments, default judgment, setting aside, and enforcement of foreign and domestic judgments generally.

Niraj has recently:

- Settled statements of case and an application notice on behalf of a solicitors' firm alleging breach of undertaking by another firm of solicitors in relation to a residential conveyancing matter.
- Successfully defended a well-known city lettings agent in a claim by a landlord for breach of a management agreement and secured a costs order.
- Secured the recovery of an estate agent's commission in its claim against vendors, having introduced a purchaser to the transaction with the vendors.
- Settled Particulars of Claim for a sole trader seeking payment of a debt following the defendant's failure to pay invoices in respect of transport services supplied.
- Advised and successfully represented at trial a self-employed handyman in his claim for an unpaid debt and damages for wrongful interference with his tools.
- Appeared for the claimant in a claim for the repayment of an oral loan and successfully rebutted the presumption against creating legal relations in a domestic context.
- Settled proceedings on behalf of a long leaseholder in his claim for damages for breach of contract, breach of statutory duty, and misrepresentation following a builder's failure to remedy defects.
- Acted successfully for the claimant in a claim for rescission and damages for misrepresentation following her purchase of an accident-damaged vehicle from a local car dealership.
- Settled a defence for a company against whom a claim had been made for rescission and damages under Sale of Goods Act 1979.

## Insolvency

Niraj has:

- Obtained urgent interim injunctive relief on behalf of a minority shareholder during the course of an unfair prejudice petition.
- Represented a lower league football club at a winding-up hearing.
- Acted for a petitioner in a bankruptcy claim against an individual who had failed to pay the wasted costs of a withdrawn claim.
- Successfully appeared at short notice for a debtor seeking the adjournment of a bankruptcy petition.

- Acted for a debtor in opposition to an application by the Official Receiver for a charging order.
- Successfully appeared in the Companies Court in an application for restoration to the Register of Companies.

## Professional Negligence

Niraj has:

- Advised on the merits of a professional negligence claim by residential owners against their conveyancing solicitors (various).
- Advised on the merits of a professional negligence claim by a long leaseholder in respect of negligent advice regarding a lease extension.

## Private Client

Niraj has:

- Advised on a claim under Inheritance (Provision for Family and Dependents) Act 1975.
- Advised and drafted proceedings for the sole beneficial owner of a residential flat who sought the transfer of legal title into his own name.
- Sought a declaration and vesting orders for a client who had lent a business partner the entire purchase monies for a residential property and was entitled to that property beneficially under a resulting trust.
- Settled a Defence for a client whose former partner sought damages for the alleged removal and destruction of her personal property following the breakdown of their relationship.
- Appeared at a directions hearing for a client claiming a beneficial interest in property and orders under Trusts of Land and Appointment of Trustees Act 1996.

## Notable Cases

**Regina (Eastenders Cash & Carry Plc & Others) v Revenue & Customs Commissioners & Regina (First Stop Wholesale Ltd) v Same [2014] UKSC 34; [2014] 2 WLR 1580**

Instructed by the Respondent (Eastenders) and Appellant (First Stop) as second junior in appeals to the Supreme Court regarding the seizure and detention of property by HMRC.

**Schettini v Silvestri [2019] EWCA Civ 349; [2019] 2 WLUK 119**

Instructed as sole counsel. This case deals with the principles to be applied when a party seeks to be released from an undertaking and whether it is possible to appeal a cross-undertaking even when this was arguably imposed incorrectly.

**Homes of England v Horsham Holdings & ors [2019] WLUK 578**

Instructed as sole counsel. This case involved the grant of an interim injunction to a minority shareholder who was petitioning for unfair prejudice in the underlying proceedings, where there was a seriously arguable case that the majority shareholders were conducting business which was unfairly prejudicial to the petitioner.

**Leon v Her Majesty's Attorney General & Others [2018] EWHC 3026 (Ch)**

Instructed as sole counsel. This case establishes the principles that a Court must apply when an individual seeks a vesting order under the Companies Act 2006 following the dissolution and striking off of a company which held a long lease of residential property. This case is being appealed to the Court of Appeal.

**Fairway Properties v Pindoria (County Court at Central London, Chancery List) (2017)**

Succeeded in establishing a prescriptive easement between two commercial properties in Stanmore following a four-day trial.

**LPA Receivers v W & M (County Court at Winchester) (2015)**

Successful on appeal before the circuit judge in a claim for possession by receivers of property that had been sublet by an associate of the mortgagor; argued that receivers were entitled to serve notice on behalf of the 'landlord' within the meaning of s.45 Housing Act 1988 despite the lease to the associate.

## Recommendations

"Whilst always meticulously prepared, he is also extremely good on his feet."

*Legal 500 2020 (Property Litigation)*

"Thank you Niraj for helping to achieve an excellent result. From the outset your advice was comprehensive, clear and well thought out. This laid the foundation to progress quickly and achieve the desired outcome. Should the need arise, I would have no hesitation in instructing

you again or recommending your services to others."

*Client, County Court at Barnet*

"Mr Niraj Modha has represented me in a Court Case. His 'after case' care and attention to my needs, to see it through by advice, has been exemplary and beyond my expectations."

*Client, County Court at Wandsworth*

"Thank you, Niraj, for your excellent service and support in the matter. I am very pleased with the service. Niraj has always been approachable and replied promptly to our queries. We have had telephone conversations without having to worry about charges for every query. I enjoyed working with Niraj and will definitely be instructing him in the future."

*Solicitor, Southall*

"Niraj's advice was exceptionally helpful – an impressive speed of response and an immediate grasp of the issues. I hope to have the opportunity to instruct him again."

*Solicitor, London*

"Niraj is approachable, helpful, prompt, very able and happy to have a chat generally without attempting to charge at every opportunity for minor exchanges. Happy with the service."

*Solicitor, Ealing*

"I have used the services of Mr Niraj Modha in a relatively difficult case. I found his dedication, patience and knowledge to be exceptional. He paid careful attention to every minor detail and used it to maximum advantage. His pleasant personality made it easy to communicate with him and I have no hesitation to seek his advice again or recommend him to other clients. Many thanks Niraj."

*Client*

"Very pleased with the knowledge and expertise of Niraj in his handling of this case. I was particularly impressed with his skeleton argument which gave a clear application of the law to the facts."

*Solicitor, Bedford*

"Thank you for your continued assistance. Your approach to your work and your knowledge are an excellent combination. I will be sure to continue to instruct you. Our client was also incredibly happy with your advocacy at our initial hearing. Many thanks."

*Solicitor, Knightsbridge*

"Niraj is approachable, technically astute, and fearless against the opposition. I met Niraj by a chance recommendation and have used him ever since. I always enjoy working with Niraj and could not recommend him more."

*Solicitor, Wanstead*

"Very good service provided. Provided clear advice. Niraj was happy to review papers and provide input/feedback on issues outside the initial fee quote which was particularly helpful. I would certainly instruct again."

*Solicitor, Surrey*

## Awards

- Scholarship in Private Dispute Resolution, Worshipful Company of Arbitrators (2016)
- Levitt Scholarship for pupillage, Lincoln's Inn (2010)
- Buchanan Prize for BVC results, Lincoln's Inn (2010)
- 3 Verulam Buildings Prize for the best overall performance, City Law School (2009)
- Hardwicke Entrance Award, Lincoln's Inn (2009)
- Lord Denning Scholarship for the BVC year, Lincoln's Inn (2009)
- Lord Haldane Scholarship for the CPE year, Lincoln's Inn (2008)
- Titular Scholarship, Robinson College (2006)
- College Prize, Robinson College (2006)

## Qualifications

- Diploma in International Commercial Arbitration (2016)
- BVC (Outstanding), BPP Law School, London (2010)
- MA (Cantab) (2010)
- CPE (Distinction), City Law School, London (2009)

- Qualified Teacher Status (2007)
- BA (First Class Honours), Robinson College, Cambridge (2006)

## Memberships

- Fellow of the Chartered Institute of Arbitrators (FCIArb)
- Arbitrator at the ABTA Arbitration Scheme
- Chartered Institute of Arbitrators
- International Bar Association
- Chancery Bar Association
- Property Bar Association
- Young International Arbitration Group
- Young Arbitrators Forum

## Languages

- English
- German
- Gujarati