



serle court

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Jonathan Upton

Year of Call: 2004

"The perfect package for complex and hard-fought property litigation, Jonathan is both technically brilliant and a creative advocate."

"He combines a sharp mind, deep knowledge, experience and seasoned advocacy with consummate client-handling skills. Very cerebral, persuasive towards judges, prompt and easy to deal with."

Legal 500 & Chambers UK

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Practice Overview

Jonathan's cases invariably involve land and property but span commercial, company, fraud, trust and insolvency law disputes and related professional negligence. Jonathan is recognised as a leading senior junior having been providing advice and advocacy on these issues for almost twenty years. He has appeared in courts and tribunals at all levels, including the Supreme Court and Court of Appeal (on many occasions without a leader). He is equally happy acting in large, complex litigation as part of a team as he is representing an individual landowner, developer or leaseholder. Jonathan is frequently against silks as sole counsel. He also acts in mediations and arbitrations.

Jonathan is acknowledged as a leading practitioner in the fields of restrictive covenants, rights to light and other easements, leasehold enfranchisement, tenants' rights of first refusal, right to manage and service charges. Jonathan is particularly experienced on matters relating to mixed-use developments. His cases regularly involve large group litigation.

He is frequently instructed in relation to joint ventures, overage, contracts for sale, options, injunctions, specific performance and orders for sale.

Jonathan has particular experience of cases involving fraudulent dispositions, sham transactions and allegations of dishonesty. He is a seasoned trial advocate and has been involved in a number of cases involving the bona fides of a declaration of trust, including *Tigris Industries Inc v Ghassemian* [2016] EWCA Civ 269; *Saranovic v Saranovic* The Times, March 21, 2017; and *Premium Jet AG v Sutton* [2017] EWHC 186 (QB).

His trusts work encompasses co-ownership disputes and applications for orders for sale/TOLATA claims. He successfully argued for a resulting trust analysis in *Chaudhary v Chaudhary* [2013] EWCA Civ 758; [2013] 2 F.L.R. 1526; [2013] Fam. Law 1257, cited in all the leading texts. He successfully appeared in the Upper Tribunal (Fancourt J) concerning the First-tier Tribunal's jurisdiction to determine an application by joint trustees in bankruptcy to register a restriction against a property held in joint names (*Woloff and Dante (as Joint Trustees in Bankruptcy of Alexander James Dhillon) v Patel* [2019] UKUT 333 (LC)).

Jonathan has been ranked in Chambers & Partners and the Legal 500 for many years. He is "the perfect package for complex and hard-fought property litigation. Jonathan is both technically brilliant and a creative advocate." He "combines a sharp mind, deep knowledge, experience and seasoned advocacy with consummate client-handling skills"; he is "very cerebral, persuasive towards judges, prompt and easy to deal with"; and "a good all-round property barrister with both residential and commercial expertise".

Jonathan also accepts instructions directly from members of the public under the Public Access scheme.

Areas of Expertise

Property

Jonathan's practice includes the full spectrum of real property and commercial and residential landlord and tenant disputes.

He has significant experience in rights of light disputes and disturbances of other easements, acting for both developers and land owners, involving claims for injunctive relief and damages in lieu. His cases frequently involve expert evidence on negotiating damages based on a share of development profit. His recent work includes a claim for £1.9m arising out of the redevelopment of a prominent site in Shoreditch.

Jonathan advises and litigates on joint venture disputes and other matters relating to land including contracts for sale,

overage, options, injunctions, specific performance, possession and orders for sale.

He is acknowledged as a leading practitioner in the field of restrictive covenants. Recent cases include:

- *Lees v Southern Electric Power Distribution Plc* LC-2023-000412. Acting for objector in relation to land adjoining an electricity substation.
- *Blackhorse Investments (Borough) Limited v Southwark LBC* LC-2021-000445. Application to set aside a final order modifying a restrictive covenant to permit conversion of a former public house into residential flats.
- *Martin v Lipton* [2020] UKUT 8 (LC); [2020] PLSCS 7. Successfully acted for an indemnity provider in a claim for modification of a restrictive covenant preventing development. The claim was fiercely opposed by all of the insured's neighbours.

Jonathan's extensive knowledge of the statutory protections in the residential landlord and tenant context make him the first choice counsel on matters affecting mixed-use developments. He advises and litigates on lease interpretation, tenants' rights of first refusal, leasehold enfranchisement, right to manage, variation of leases and service charges. His cases frequently involve large group litigation. Recent notable cases include:

- *Saunders v Shenfield Limited* [2023] UKUT 208 (LC) FTT Procedure; standard directions; disclosure; QLTAs.
- *Riverside Crem 3 Ltd v Unsdorfer* [2022] UKUT 98 (LC); [2022] 4 WLUK 11 Whether management order binding following assignment of landlord's reversion.
- *Eastern Pyramid Group Corporation SA v Spire House RTM Company Limited* [2021] EWCA Civ 1658; [2022] 1 W.L.R. 503; [2021] 11 WLUK 73; [2022] L. & T.R. 8; Times, January 17, 2021 Right to Manage; withdrawal of claim notice; proper construction of s.86(2); consequences of failing to serve notice of withdrawal on qualifying tenants.
- *Chaun-Hui v K Group Holdings Inc* [2021] EWCA Civ 403; [2021] 1 W.L.R. 5981; [2021] 3 WLUK 329; [2022] 1 P. & C.R. 14; [2021] L. & T.R. 12 Whether payments under a management order are "service charges"; recovery of arrears owed to manager following termination of manager's appointment.
- *Eshraghi v 7/9 Avenue Road (London House) Ltd* [2020] UKUT 208 (LC) Service charges; Reserve funds; Jurisdiction; legal costs.
- *Consensus Business Group (Ground Rents) Ltd v Palgrave Gardens Freehold Co* [2020] EWHC 920 (Ch); [2020] 4 WLUK 236; [2020] 2 P. & C.R. 13; [2020] L. & T.R. 12 Collective enfranchisement; Initial notices; Validity; Permission to amend; meaning of "self-contained building".
- *Freehold Properties 250 Ltd v Field & Others* [2020] EWHC 792 (Ch); [2020] Ch. 665; [2020] 3 W.L.R. 233; [2020] 4 WLUK 142; [2020] L. & T.R. 15 Meaning of "tenant of a leasehold house" in s.1(1) of 1967 Act; no right to enfranchise an eggshell lease; whether parcels clause void under s.23(1). Permission to appeal to the Court of Appeal was granted but the appeal was withdrawn.
- *Camden LBC v Morath* [2019] UKUT 193 (LC); [2020] L. & T.R. 4; [2019] 6 WLUK 382 Variation of leases; Mixed use developments
- *Wigmore Homes (UK) Ltd v Spemby Works Residents Association Ltd* [2018] UKUT 252 (LC); [2019] H.L.R. 6; [2019] L. & T.R. 12 Conditions precedent; Interim payments; Reasonableness
- *Fairman v (1) Cinnamon (Plantation Wharf) Limited (2) Plantation Wharf Management Limited (3) Cube Real Estate Developments Limited* [2018] UKUT 421 (LC) Lease construction; power to vary apportionment; applicability and effect of section 27A(6) Landlord and Tenant Act 1985
- *CQN RTM Company Limited v Broad Quay North Block Freehold Limited* [2018] UKUT 183 (LC); [2018] 7 WLUK 758; [2019] H.L.R. 9; [2018] L. & T.R. 26 Right to Manage; meaning of "structurally detached".
- *The Optic Freeholders Limited & Others v Francia Properties Limited* [2018] 9 WLUK 451 Tenants' Rights of First Refusal; Enforcement of Purchase Notice 16 years after relevant disposal; validity of purchase notice; delay; whether planning permission a "change in circumstances."
- *Francia Properties Ltd v Aristou & Ors* [2017] L. & T.R. 5 Whether roof development interferes with RTM company's management functions - permission granted for leapfrog appeal to CA.

Jonathan continues to act for the leaseholders in the ongoing *Canary Riverside Litigation* which ostensibly concerns a

management order made under Part IV of the 1987 Act but has involved land registration; priority of interests and whether a management order is binding on successors in title: *Riverside CREM 3 Limited v Unsdorfer & Others* [2022] UKUT 98 (LC). In addition to the underpinning property law, the issues have included conflict of interest, breach of confidence and legal privilege (arising from an attempt to use documents obtained from a laptop stolen to order from the manager's home) and excluding evidence on the basis of relevance. A hearing in December 2023 considered whether a tribunal manager can be an "Accountable Person" under the Building Safety Act and the interaction between building safety functions under the BSA and management functions under a management order. In related litigation, Jonathan is due to appear in the Upper Tribunal in March 2024 on an appeal concerning £1.5m unlawful insurance commissions. The matter is listed for a further 10-day hearing in the FTT in May 2024 to decide whether the management order should be extended and on what terms.

Commercial Litigation

A significant part of Jonathan's work is in a commercial context. The vast majority of his cases include issues relating to contractual interpretation. His practice includes business disputes between commercial parties and involves commercial fraud, enforcement of judgments and asset tracing.

Jonathan particularly enjoys working as part of a team in large, complex litigation where he leads on property-related issues.

He accepts instructions in disputes (litigation and arbitration) in the Cayman Islands, British Virgin Islands, Jersey, Guernsey, the Dubai International Financial Centre and Bermuda.

Civil Fraud

Jonathan has extensive experience of cases involving fraudulent dispositions, sham transactions and allegations of dishonesty. He is a seasoned trial advocate and has been involved in a number of cases involving the bona fides of a declaration of trust including *Tigris Industries Inc v Ghassemian* [2016] EWCA Civ 269; *Saranovic v Saranovic* The Times, March 21, 2017; and *Premium Jet AG v Sutton* [2017] EWHC 186 (QB).

He is highly sought after in such cases for his forensic eye for detail and his prowess in cross-examination at trial.

Company

Jonathan has acted as sole counsel on company matters including petitions under s.994 of the Companies Act 2006 and cases concerning directors' duties. He is particularly experienced on matters relating to the management and administration of companies owned and controlled by leaseholders.

Private Client Trusts and Probate

His trusts work encompasses co-ownership disputes and applications for orders for sale/TOLATA claims in both the domestic and commercial context. He successfully argued for a resulting trust analysis in *Chaudhary v Chaudhary* [2013] EWCA Civ 758; [2013] 2 F.L.R. 1526; [2013] Fam. Law 1257, cited in all the leading texts. He successfully appeared in the Upper Tribunal (Fancourt J) concerning the First-tier Tribunal's jurisdiction to determine an application by joint trustees in bankruptcy to register a restriction against a property held in joint names (*Wolloff and*

Dante (as Joint Trustees in Bankruptcy of Alexander James Dhillon) v Patel [2019] UKUT 333 (LC)).

Jonathan has particular experience of cases involving fraudulent dispositions, sham transactions and allegations of dishonesty. He is a seasoned trial advocate and has been involved in a number of cases involving the bona fides of a declaration of trust including *Tigris Industries Inc v Ghassemian* [2016] EWCA Civ 269; *Saranovic v Saranovic* The Times, March 21, 2017; and *Premium Jet AG v Sutton* [2017] EWHC 186 (QB).

Professional Negligence

Jonathan acts in a range of professional negligence disputes, invariably involving solicitors, valuers, surveyors and other property professionals. His extensive knowledge of the underpinning substantive property law and/or valuation principles makes him a natural choice.

Recent work includes a claim against solicitors for failing to register a transaction in circumstances where the vendor subsequently re-sold the property to an innocent third party.

Banking and Financial Services

Jonathan has significant experience in banking and financial services disputes. He has acted in many high value cases about the enforcement of securities in regulated and unregulated lending. He is often instructed to advise and act in securities and receivership cases where enforcement is challenging.

Partnership and LLP

Recent works include *Uthyavel v Raviraj* [2021] EWHC 501 (Ch), a 5-day trial regarding a complex partnership dispute about a business and properties in East London.

Group Litigation

Jonathan frequently acts for large groups of leaseholders. Recent examples include:

- *The Canary Riverside Litigation (e.g. Riverside Crem 3 Ltd v Unsorfer* [2022] UKUT 98 (LC)). Acting for over 100 leaseholders in bitterly contested litigation against the Yianis Group.
- *Leaseholders of Phoenix Place v Better Intelligent Management*. Acting act for a group of investors who own flats in a development comprising studio accommodation in Liverpool. There are parallel proceedings in the FTT and the Business and Property Courts.
- *Chaun-Hui v K Group Holdings Inc* [2021] EWCA Civ 403; [2021] 1 W.L.R. 5981; [2021] 3 WLUK 329; [2022] 1 P. & C.R. 14; [2021] L. & T.R. 12 Acting for a large group of leaseholders in a mansion block on Park Lane, Mayfair.
- *Fairman v (1) Cinnamon (Plantation Wharf) Limited (2) Plantation Wharf Management Limited Cube Real Estate Developments Limited* [2018] UKUT 421 (LC) Acting for as large group of leaseholders in a dispute about the landlord's power to vary the apportionment of service charges.
- *The Optic Freeholders Limited & Others v Francia Properties Limited* [2018] 9 WLUK 451 Tenants' Rights of First Refusal; Enforcement of Purchase Notice 16 years after relevant disposal; validity of purchase notice; delay; whether planning permission a "change in circumstances."

- *Francia Properties Ltd v Aristou & Ors* [2017] L. & T.R. 5 Whether roof development interferes with RTM company's management functions - permission granted for leapfrog appeal to CA.

Jonathan has also acted in many cases for local authorities in borough-wide applications for dispensation with the consultation requirements in relation to electricity contracts, insurance and major works. He has also acted for landlords in similar applications against large groups of leaseholders.

Direct Access

Jonathan accepts instructions directly from members of the public under the Public Access scheme. He frequently acts for developers, landlords, management companies and individual leaseholders. In appropriate cases, he may also be able to accept direct access instructions from a large group of leaseholders.

Notable Cases

- *Saunders v Shenfield Limited* [2023] UKUT 208 (LC) FTT Procedure; standard directions; disclosure; QLTAs.
- *Riverside Crem 3 Ltd v Undorfer* [2022] UKUT 98 (LC); [2022] 4 WLUK 11 Whether management order binding following assignment of landlord's reversion.
- *Eastern Pyramid Group Corporation SA v Spire House RTM Company Limited* [2021] EWCA Civ 1658; [2022] 1 W.L.R. 503; [2021] 11 WLUK 73; [2022] L. & T.R. 8; Times, January 17, 2021 Right to Manage; withdrawal of claim notice; proper construction of s.86(2); consequences of failing to serve notice of withdrawal on qualifying tenants.
- *Chaun-Hui v K Group Holdings Inc* [2021] EWCA Civ 403; [2021] 1 W.L.R. 5981; [2021] 3 WLUK 329; [2022] 1 P. & C.R. 14; [2021] L. & T.R. 12 Whether payments under a management order are "service charges"; recovery of arrears owed to manager following termination of manager's appointment.
- *H Stain Ltd v Richmond* [2021] UKUT 0066 (LC) Service charges; construction of a lease.
- *Uthyavel v Raviraj* [2021] EWHC 501 (Ch); [2021] 3 WLUK 183 Partnership agreements; Partnership property; Shops.
- *Eastern Pyramid Group Corporation Sa v Spire House RTM Company Limited* [2020] UKUT 0199 (LC); [2020] 3 WLUK 681 Right to Manage; withdrawal of claim notice; proper construction of s.86(2); consequences of failing to serve notice of withdrawal on qualifying tenants.
- *Eshraghi v 7/9 Avenue Road (London House) Ltd* [2020] UKUT 208 (LC) Service charges; Reserve funds; Jurisdiction; legal costs.
- *Consensus Business Group (Ground Rents) Ltd v Palgrave Gardens Freehold Co* [2020] EWHC 920 (Ch); [2020] 4 WLUK 236; [2020] 2 P. & C.R. 13; [2020] L. & T.R. 12 Collective enfranchisement; Initial notices; Validity; Permission to amend; meaning of "self-contained building".
- *Freehold Properties 250 Ltd v Field & Others* [2020] EWHC 792 (Ch); [2020] Ch. 665; [2020] 3 W.L.R. 233; [2020] 4 WLUK 142; [2020] L. & T.R. 15 Meaning of "tenant of a leasehold house" in s.1(1) of 1967 Act; no right to enfranchise an eggshell lease; whether parcels clause void under s.23(1).
- *Martin v Lipton* [2020] UKUT 8 (LC); [2020] 1 WLUK 56; [2020] PLSCS 7 Compensation; Modification; Restrictive covenants; User covenants
- *Oung Lin Chaun-Hui v K Group Holdings Inc* [2019] UKUT 371 (LC); [2020] L. & T.R. 5; [2019] 12 WLUK 80 Whether payments under a management order are "service charges"; recovery of arrears owed to manager following termination of manager's appointment; F-tT's approach to issues not properly pleaded. (Permission for a second appeal to the CA granted.)
- (1) *Canary Riverside Estate Management Limited*; (2) *Octagon Overseas Limited v Various Leaseholders of Canary Riverside* LRX/99/2019 (unreported) Variation of a management order; discharge and appointment of replacement manager; conflict of interest; application to exclude evidence; whether management order binding

against third parties; rule 13 costs

- *Woloff and Dante (as Joint Trustees in Bankruptcy of Alexander James Dhillon) v Patel* [2019] UKUT 333 (LC); [2019] 11 WLUK 17; [2020] B.P.I.R. 318; [2020] 1 P. & C.R. DG14; [2020] 4 C.L. 148 Land Registration; Co-ownership; Bankruptcy; Jurisdiction; Constructive and Resulting Trusts
- *Camden LBC v Morath* [2019] UKUT 193 (LC); [2020] L. & T.R. 4; [2019] 6 WLUK 382 Variation of leases; Mixed use developments
- *Palgrave Gardens Freehold Company Limited v Consensus Business Group (Ground Rents) Limited* [2019] L. & T.R. 17; [2019] 2 WLUK 265 Collective Enfranchisement; validity of notices; meaning of "Building" (Permission granted for leapfrog appeal to CA).
- *Wigmore Homes (UK) Ltd v Spemby Works Residents Association Ltd* [2018] UKUT 252 (LC); [2019] H.L.R. 6; [2019] L. & T.R. 12 Conditions precedent; Interim payments; Reasonableness
- *Fairman v (1) Cinnamon (Plantation Wharf) Limited (2) Plantation Wharf Management Limited (3) Cube Real Estate Developments Limited* [2018] UKUT 421 (LC) Lease construction; power to vary apportionment; applicability and effect of section 27A(6) Landlord and Tenant Act 1985
- *CQN RTM Company Limited v Broad Quay North Block Freehold Limited* [2018] UKUT 183 (LC); [2018] 7 WLUK 758; [2019] H.L.R. 9; [2018] L. & T.R. 26 Right to Manage; meaning of "structurally detached".
- *The Optic Freeholders Limited & Others v Francia Properties Limited* [2018] 9 WLUK 451 Tenants' Rights of First Refusal; Enforcement of Purchase Notice 16 years after relevant disposal; validity of purchase notice; delay; whether planning permission a "change in circumstances".
- *Francia Properties Ltd v Aristou & Ors* [2017] L. & T.R. 5 Whether roof development interferes with RTM company's management functions - permission granted for leapfrog appeal to CA.
- *Saranovic v Saranovic* [2017] Co-ownership; beneficial interests; s.1(2)(b) of the Law of Property (Miscellaneous Provisions) Act 1989; unjust enrichment; non est factum; order for sale.
- *Premium Jet AG v Sutton* [2017] EWHC 186 (QB) Enforcement of Foreign Judgments; Final Charging Order; Beneficial Interests; Declaration of Trust; sham transactions; s.423 Insolvency Act 1986; transactions defrauding creditors.
- *Cowthorpe Road 1 - 1a Freehold Limited v Wahedally* [2017] L. & T.R. 4 Collective Enfranchisement; service of counter-notice by email.
- *Leaseholders of Foundling Court & O'Donnell Court, Brunswick Centre, London v (1) Camden LBC; (2) Allied London (Brunswick) Ltd & Others* [2016] UKUT 366 (LC); [2017] L. & T.R. 7 Service Charges; Consultation Requirements; whether freeholder and/or intermediate landlord obliged to consult sub-tenants.
- *Saunders v Al-Himaly* [2017] EWHC 2219 (Ch) Joint venture; proprietary estoppel; unjust enrichment.
- *Tigris Industries Inc v Ghassemian* [2016] EWCA Civ 269 Order for sale; second appeals; abuse of process.
- *Fazil v Portman Estate Nominees (One) Ltd, CLCC (Ch)* [2016] (Unreported) Lease extensions; vesting orders; date terms of acquisition agreed.
- *Rossman v Crown Estate Commissioners* [2015] UKUT 0288 (LC); [2015] L&TR 31 Lease extension; modification of terms.
- *Ghassemian v Tigris Industries Inc* [2014] EWHC 3362 (Ch) Order for sale; beneficial ownership; fraud.
- *Dass v Beggs* [2014] EWHC 164 (Ch) Fraud; security for costs.
- *Ghassemian v Tigris Industries Inc* [2014] EWHC 3362 (Ch); [2014] 10 WLUK Charging orders; Order for Sale; Authenticity of Declaration of Trust; Burden of proof.
- *Daejan Investments Ltd v Benson* [2013] UKSC 54; [2013] 7 WLUK 773 Dispensation; Terms of Order; Costs capping orders.
- *Ghassemian v Tigris Industries Inc* [2013] EWHC 2170 (Ch); [2013] 7 WLUK Adverse possession; Charged property; Legal charges.
- *Chaudhary v Chaudhary* [2013] EWCA Civ 758; [2013] 5 WLUK 25; [2013] 2 F.L.R. 1526; [2013] Fam. Law 1257 Beneficial interests; Resulting Trusts; Presumption of advancement.
- *Clearwater Properties Ltd, Re* [2013] UKUT 210 (LC); [2013] 3 WLUK 767 Consent; Discharge; Restrictive covenants; User covenants.
- *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 W.L.R. 854; [2013] 2 All E.R. 375; [2013] 3 WLUK 107; [2013] H.L.R. 21; [2013] 2 P. & C.R. 2; [2013] L. & T.R. 17; [2013] 2 E.G.L.R. 45; [2013] R.V.R. 164 Service

charges; Consultation; Dispensation.

Quotes

"Jonathan Upton is intelligent, reliable and pragmatic in his approach to dealing with matters." (Chambers UK, 2024)

"Very reliable and experience in leasehold enfranchisement matters." (Chambers UK, 2024)

"Jonathan is first rate on all things residential. He offers senior experience and service." (Legal 500, 2024)

"Jonathan is realistic, which is a valuable skill in commercial settings." "He is just incredibly approachable and helpful. You can just pick up the phone and talk to him." "Jonathan is easy to work with and has a very good understanding of the law." (Chambers UK, 2023)

"The perfect package for complex and hard-fought property litigation, Jonathan is both technically brilliant and a creative advocate." (Legal 500, 2023)

"He is a very good technical specialist on service charge disputes." "He is an absolute master of the First-tier Tribunal." "His written arguments are spot-on and convincing." (Chambers UK, 2022)

"Jonathan is quietly confident and learned, a strong intellect and someone who has really established his own name as a leading practitioner in restrictive covenant and residential law." (Legal 500, 2022)

"He combines a sharp mind, deep knowledge, experience and seasoned advocacy with consummate client-handling skills. Very cerebral, persuasive towards judges, prompt and easy to deal with. A good all-round property barrister with both residential and commercial expertise." (Chambers UK, 2021)

"Very knowledgeable and experienced in service charges and enfranchisement." (Legal 500, 2021)

"A good choice for tricky cases, and someone who provides advice efficiently. He is both very commercial and good value for money." (Chambers UK, 2020)

"A specialist in residential service charge law." (Legal 500 2020 (Property Litigation))

"He has great knowledge and experience, an expert in service charges." (Legal 500, 2019)

"Very switched-on and technically very bright." "He's very attuned to the client's interests and goals." (Chambers UK, 2018)

Publications

Co-author, Service Charges & Management, 3rd Edition (Sweet & Maxwell)

Section Editor, [Property Law UK](#)

Managing Editor, [News on the Block](#), The LVT Bulletin

Contributor, Leasehold Life

Contributor, [Flat Living](#)

Memberships

Association of Leasehold Enfranchisement Practitioners

Chancery Bar Association
Property Bar Association
