



Falcon Chambers



## Adam Rosenthal QC

Called 1999 Silk 2020



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## Practice Summary

Adam is an experienced property litigator whose practice encompasses all aspects of real property and landlord and tenant-related litigation and advice. He is a persuasive advocate with considerable courtroom experience at all levels, including the High Court and the Court of Appeal and also appears in the First Tier Tribunal (Property Chamber) (Land Registration and Property Divisions) and the Upper Tribunal. He also has considerable experience of arbitration. He gives clear, commercial, strategic and practical advice.

Adam has particular expertise in the following:

- The sale and development of land, including the interpretation of contracts for sale and development agreements, options, rights of pre-emption, joint venture agreements / Pallant v Morgan trusts, overage, rectification claims, proprietary estoppel
- Land registration, title disputes, adverse possession, alteration and rectification of the register
- Restrictive covenants, including applications to the Upper Tribunal for the discharge and modification of covenants
- Easements, including rights of way, rights to light, rights relating to the supply of utilities, prescription
- Commercial landlord and tenant, including forfeiture claims, all aspects of business tenancies, break notices, dilapidations, rent review and service charges
- Residential landlord and tenant, including all aspects of leasehold enfranchisement, service charges, RTM, variation of leases and tribunal-appointed managers
- Arbitrations under the Pubs Code
- Mortgages, charges, charging orders
- Trusts of land and beneficial ownership disputes

- Property-related insolvency issues
- Property-related professional negligence cases.

Adam is always ready to get up to speed quickly on areas of law outside of the core aspects of real property and landlord and tenant law where required. For example he recently appeared in a trial of a claim for breach of contract and misrepresentation concerning a sale and purchase of high-value houseboats which required in-depth knowledge of the law relating to the sale of goods / conversion and he has acted, recently, in judicial review proceedings in the Administrative Court.

- Education

- St. Catherine's College, Oxford University - BA (1998) (Law with French Law): 1st Class; College Scholarship
- Université Panthéon-Assas (Paris II) (Third Year of Degree)
- Fluent in French.

- Professional

- Gray's Inn (Prince of Wales Scholarship)
- Inns of Court School of Law
- Appointed Junior Counsel to the Crown - A Panel.

- Recent Cases

- **Moorjani v Durban Estates** [2019] EWHC 1229 (TCC). A Leaseholder's claim for damages following the freeholder's alleged breach of its repairing obligations was barred by the cause of action estoppel and merger.
- **Parker v Roberts** [2019] EWCA Civ 121: appeal to the Court of Appeal concerning the extent of a right of way / implied easements. Judgment in the Chancery Division ([2018] EWHC 1206 (Ch)) also concerned questions of implied release of easements / prescription / defective registration of a restrictive covenant.
- **Re O'Byrne's Application** [2018] UKUT 395 (LC): Application to the Upper Tribunal (Lands Chamber) under s.84(1) of the Law of Property Act 1925 for the modification of restrictive covenants.
- **Wild Duck Ltd v Smith** [2018] EWCA Civ 1471, [2018] L & TR 35: appeal against decision of the Chancery Division ([2017] EWHC 1252 (Ch)) concerning the extent of an implied obligation on a landlord in a tripartite lease not to prevent a tenant-owned management company from performing its obligations to undertake works to a site comprising holiday lodges in the Cotswolds.
- **Generator Developments LLP v Lidl UK GmbH** [2018] EWCA Civ 396, [2018] 2 P & CR 7 (on appeal from [2016] EWHC 814 (Ch)): whether a Pallant v Morgan equity arose where parties failed to agree terms for a joint venture.
- **Office Depot International (UK) Ltd v UBS Asset Management (UK) Ltd** [2018] EWHC 1494 (TCC): strike out of tenant's claim for declarations as to what work was needed to comply with its repairing obligations in a commercial lease.
- **Djurberg v Small & Johnstone v Djurberg** (Chancery Division, 1 September 2017): appeared for the purchasers of luxury houseboats who recovered substantial damages at trial in their claims against the seller for breach of contract and misrepresentation.
- **Curzon v Wolstenholme** [2018] 1 WLR 4497: appeared for the successful appellant in an appeal to the Court of Appeal concerning registration of notices under the Leasehold Reform, Housing and Urban Development Act 1993.
- **Levett-Dunn v NHS Property Services Limited** [2016] Ch. 637: whether break notices validly served at premises with which none of the landlords retained any connection at the time of the notices, under s.196 of the Law of Property Act 1925 and, in the alternative, whether the lease had been surrendered on the grant of a new lease to a third party by the landlord.
- **A2 Dominion Homes Limited v Prince Evans Solicitors** [2015] EWHC 2490 (Ch): acted for solicitors in trial of preliminary issue in professional negligence claim, as to whether the priority protection of a unilateral notice entered to protect an agreement for lease extended to the lease,

once granted.

- **Creative Foundation v Dreamland Leisure Limited** [2015] EWHC 2556 (Ch), [2016] Ch. 253: claim by assignee of reversion under a lease, in respect of the removal by the tenant of a cross-section of the wall on which a Banksy mural had been painted.
- **Mount Eden Land Limited v Bolsover Investments Limited** [2014] EWHC 3523 (Ch): whether a landlord was unreasonably withholding consent to alterations where a tenant sought consent to convert offices into flats and the landlord withheld consent on the ground that the tenant and / or sub-tenants of the flats might acquire rights of enfranchisement.
- **Erimus Housing Limited v Barclays Wealth Trustees (Jersey) Limited** [2014] EWCA Civ 303: appeal to the Court of Appeal about whether a commercial tenant who held over after the expiry of a contracted out lease became an annual tenant as a result of the continued payment and acceptance of rent.
- **Xenakis v Birkett Long LLP** [2014] EWHC 171 (QB): trial of a professional negligence claim against a solicitor arising out of advice given about the terms of a surety covenant in a commercial lease. The court was concerned with questions of breach of duty and causation, and whether the losses claimed were the losses of the claimants or a third-party corporate entity which they controlled.
- **Sumner v Costa** [2014] EWHC 96 (Ch): applications for permission to appeal and / or to set aside an arbitration award in a commercial rent review, together with an application to remove the arbitrator and for the arbitrator to pay the landlord's costs.
- **Henley v Cohen** [2013] EWCA Civ 480. Appeal to the Court of Appeal on whether a mixed-use property is a house reasonably so called for the purposes of the Leasehold Reform Act 1967. The court also held that a tenant was precluded from relying on alterations to the premises in breach of covenant in order to invoke the benefits of the Act.
- **Ampurius Nu Homes Holdings Limited v Telford Homes (Creekside) Limited** [2013] EWCA Civ 577. Appeal to the Court of Appeal about whether a developer's breach of a sale agreement, by failing to proceed with due diligence / use reasonable endeavours to meet target dates, was a repudiatory breach entitling the purchaser to terminate the agreement.
- **Ridgewood Properties Group Ltd v Valero Engery Ltd** [2013] EWHC 98 (Ch). Claim for damages for breach of option agreements.
- **Eaton Square Properties Limited v Shaw** [2011] EWHC 2115 (QB); [2011] 3 EGLR 13: whether a landlord of a dwelling owed the tenant a duty in tort to prevent the tenant from losing out on profits from a business venture which was hampered by the landlord's failure to carry out works required to the dwelling.
- **Tingdene Holiday Parks Limited v Cox** [2011] EWUT 310 (LC); [2011] 3 EGLR 30: appeal to Upper Tribunal (Lands Chamber) on various issues arising out of a service charge dispute concerning a holiday village.
- **Pinkleton Properties Limited v Dorchester Holdings Limited** [2011] EWHC 2801 (Ch): application for an injunction to restrain the presentation of a winding up petition. Application dismissed on ground that the argument which the company sought to raise was *res judicata*, having been the subject of earlier proceedings which resulted in a default judgment.
- **Winwood v Biffa Waste Services Limited** [2011] EWCA Civ. 108: Appeal on question of construction of a lease of a landfill site, as to whether the tenant is subject to a continuing duty to apply for planning permissions and site licences to maximise the potential of the site under the relevant environmental legislation.
- **Sable v QFS Scaffolding** [2010] L & TR 30; [2010] EWCA Civ. 682: Surrender by operation of law of commercial lease.
- **Tew v South Northamptonshire Council** [2010] UKUT 333 (LC): Upper Tribunal, Lands Chamber decision on assessment of compensation payable for compulsory purchase of a derelict building under the Planning (Listed Buildings and Conservation Areas) Act 1990.
- **Redstone Mortgages Plc v Welch** [2009] 3 EGLR 71: Questions of priority as between a mortgagee and the innocent victim of a fraudulent sale and lease-back transaction.
- **Nissim v Ablethird Limited** [2009] EWHC 585 (Ch): Reference to the High Court under the

Arbitration Act in a rent review arbitration to determine whether concessionary rent to be included as a term of the hypothetical lease.

- **Re Rest Harrow, 14 The Combe - Lands Tribunal (LP/56/2007)**: Application to the Lands Tribunal under section 84 of the Law of Property Act 1925 for the modification of restrictive covenants preventing development.
- **Looe Fuels Limited v. Looe Harbour Commissioners** [2008] EWCA Civ. 414 (Court of Appeal): specific performance of oral agreement for lease of fuel facility in Looe Harbour and injunction to restrain derogation from grant.
- **Peaceform Limited v. Cussens** [2007] 3 EGLR 67 (Chancery Division): validity of option notice.
- **Denton v Denton** (The Times, 14 April 2004) (Costs; Conditional Fee Agreements; Construction of solicitors' retainer letter).
- **Owen v Blathwayte** [2003] 1 P & CR 28 (Construction of grazing rights over common land).
- **Melville v Hammersmith & Fulham London Borough Council** [2002] All ER (D) 242. (Limitation periods and local land charges).
- [Publications](#)
  - Commercial and Residential Service Charges (2013, Bloomsbury): Co-Author
  - Co-Author of Barnsley's Land Options (6th Edition) (2016)
  - Contributor to Fisher & Lightwood's Law of Mortgage (14th Edition) (2014)
  - Contributor to Woodfall Landlord & Tenant Bulletin.

## Published Comments

Adam Rosenthal QC is noted as an expert in property law. His main areas of focus include landlord and tenant litigation and restrictive covenants. "He is user-friendly and exceptionally bright." "He has exceptional levels of knowledge and a client-focused attitude. He would go above and beyond to find a solution." *Chambers UK Guide 2022 (Real Estate Litigation)*

Widely recognised new silk, whose main areas of focus include landlord and tenant litigation, restrictive covenants and insolvency issues. Strengths: "Unflappable and great on his feet. He makes clients feel completely secure." "Adam is extremely diligent, considered and approachable." "He's been a go-to barrister for many years." *Chambers and Partners UK Guide 2021 (Real Estate Litigation)*

"Impressive, a standout counsel. He has worked tenaciously on very high profile cases with us and has always exceeded expectations so we value his ability to create persuasive arguments, deal with advice with great commerciality and be sensitive to client objectives." *Legal 500 2021*

Widely recognised as a high-level junior in his field. His main areas of focus include landlord and tenant litigation, restrictive covenants and insolvency issues. Strengths: "A scholarly and highly articulate advocate." "He provides succinct, commercial advice and is a pleasure to work with." "He is consistently excellent – a QC in waiting." Recent work: Acted in Brobyn v Marco Island Developments, a service charge dispute regarding a significant building in Liverpool heard in the First-tier Tribunal. *Chambers and Partners UK Guide 2020 (Real Estate Litigation)*

"An accomplished practitioner in real estate litigation." *Legal 500 2020*

"robust in court" and a "very determined litigator" according to peers who praise his work on mortgages, easements and conveyancing matters. *Who's Who Legal UK Bar 2019 Guide*

"Widely recognised as a high-level junior in his field. His main areas of focus include landlord and tenant litigation, restrictive covenants and insolvency issues. Strengths: 'Extremely bright, proactive and decisive with clients.' 'Calm under pressure and a delight to work with.' Recent

work: Acted for the buyers of luxury houseboats who brought claims for misrepresentation because they found they could not live in them at their intended location on the Thames."  
*Chambers UK Guide 2019 (Real Estate Litigation)*

"Excellent analytical skills and very strong at both written and oral advocacy."*Legal 500 2018*

"Widely recognised as a high-level junior in his field. His main areas of focus include landlord and tenant litigation, restrictive covenants and insolvency issues. Strengths: 'He's very effective at creating nuanced, sophisticated and compelling legal arguments.' 'Absolutely fantastic, he is really pragmatic and knows property law inside out.' Recent work: Acted for the NHS as tenant in a trial about whether a lease had been terminated by exercising the break clause." *Chambers UK Guide 2018 (Real Estate Litigation)*

"He rolls up his sleeves and gets on with it, and balances respect and firmness in court".*Legal 500, 2017*