

NEW SQUARE CHAMBERS

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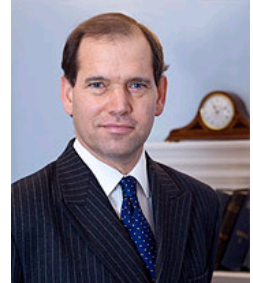
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Gerard van Tonder

Call: 1990



Gerard van Tonder was called to the Bar by Middle Temple in 1990 and has over the years gained considerable experience of advocacy at all levels and in all aspects of Chancery practice. His practice has in recent years become more concentrated on property matters and includes the following:

Property

- landlord and tenant (business and residential premises);
- leasehold enfranchisement;
- title disputes, including adverse possession;
- easements;
- disputes concerning contracts for the sale of land;
- compulsory purchase;
- overage agreements.

Gerard prides himself on his ability to provide clear and effective advice and representation. Gerard was first called to the Bar in South Africa and practised in Johannesburg for several years where he built up an established practice before moving to the UK. Gerard also has wide experience in other aspects of general Chancery practice and is especially effective in cases where a case requires knowledge and experience of more than one practice area. His other experience includes:

Insolvency

- administrations;
- liquidations;
- bankruptcy proceedings;
- claims based on alleged sales at an undervalue;
- retention of title disputes in the insolvency context.

Commercial and company matters

- shareholder disputes;
- reduction of capital applications;
- claims against directors;
- claims arising from share agreements, including breach of warranty claims;

- interim relief based on allegation based on unlawful competition.

Professional Negligence

- claims against solicitors, surveyors and accountants including those concerning property transactions and share sale agreements.

Partnership

- disputes between partners in solicitors firms, accountants, pharmacists and trading partnership, including dissolutions.

Trusts

- disputes in the context of co-ownership of land;
- disputes regarding the existence and terms of remedial trusts.

He is also regularly instructed to appear at regulatory and disciplinary hearings.

Gerard also has a distinct specialism in costs matters and is regularly instructed as specialist counsel in such matters. He is a member of the Bar Council's panel of barristers who sit as assessors in the High Court.

Areas of practice

Commercial Chancery
Company and Insolvency
Property
Offshore work & other areas

Interests

Cinema, reading, music, theatre, current affairs, etymology and sport

Languages

Afrikaans (fluent); Dutch (working knowledge)

Education and Qualifications

BA; LLB University of the Witwatersrand

Memberships

Chancery Bar Association
The London Common Law & Commercial Bar Association
Property Bar Association
Professional Negligence Bar Association
Former member of the Conduct and Qualifications Committees of the Bar Council

Cases

Commercial Chancery

Name: Utting v McBain
Reference: [2008] 3 Costs LR 442

Comment: Sitting as Assessor with Mr Justice Blake and Costs Judge Rogers and considering on an appeal from the Supreme Court Costs Office the issue of whether a Conditional Fee Agreement was enforceable.

Court: High Court

Name: Dhaliwal and Another v Dhaliwal and Others

Reference: [2007] EWHC 2083 (Ch)

Comment: Construction of the terms of a compromise reached between the owners of a chain of pharmacy businesses following a protracted dispute about the ownership of the businesses and the extent of the respective shares.

Court: High Court

Name: Hartley v Hartley

Reference: [2003] EWCA Civ 1688

Comment: Claim based on loans and consideration by the court of issues regarding the treatment of payments within the company's accounts as allegedly evidencing payments to the company.

Court: Court of Appeal

Name: Rosling King (A Firm) v Rothschild Trust

Reference: [2002] EWHC 1346 (Ch)

Comment: Decision on whether a claim by solicitors for their costs should be determined by a Costs Judge or the Chancery Division where the defendant had counter claimed for professional negligence.

Court: High Court

Name: Williams and another v Natural Life Health Foods Ltd and another

Reference: [1998] 1 WLR 830

Comment: Personal liability of a company director for losses caused by negligent misstatements made by the company. The decision of general significance in tort and company law has been commented on extensively in textbooks and applied in subsequent cases.

Court: House of Lords

Name: Hurst v Bryk and others

Reference: [1999] Ch 1

Comment: Liability of a partner to contribute to a firm's losses upon dissolution and whether the concept of repudiatory breach applies partnership law.

Court: Court of Appeal

Name: Ross v Stonewood Securities Ltd

Reference: [2005] BPIR 197

Comment: Sitting as Assessor with Mr Justice Lewison and Costs Judge Wright and considering on an appeal from the Supreme Court Costs Office the issue of proportionality of the costs claimed on the detailed assessment of costs incurred in making application for a bankruptcy order to be set aside.

Court: High Court

Company and Insolvency

Name: Re Local London Residential Limited (No 2)

Reference: [2004] EWHC 504 (Ch)

Comment: Whether a liquidator would be in breach of her duty to creditors to sell disputed property below the market value

Court: High Court

Name: Re Local London Residential Limited

Reference: [2004] EWHC 114 (Ch)

Comment: Extent to which the liquidator's costs and expenses are to be paid from disputed property on the basis of a Berkeley Applegate order

Court: High Court

Name: In the Matter of Sat-Elite Limited

Reference: [2003] EWHC 2990 (Ch)

Comment: Appropriate order for costs when a petitioner had presented an unfounded petition.

Court: High Court

Name: R v The Institute of Chartered Accountants, ex parte Eliades

Reference: Lawtel AC0100591 (30/11/2000)

Comment: Whether a member of the Institute of Chartered Accountants of England and Wales was able to challenge by judicial review the decision of a disciplinary body to withdraw his licence to practice as an insolvency practitioner.

Court: High Court

Name: Re Piccadilly Property Management Ltd

Reference: [1999] BPIR 260

Comment: The appeal and a review jurisdiction of the making of a winding-up order. The decision is of some importance as the court decided that it could hear both the appeal and a review.

Court: High Court

Name: Williams and another v Natural Life Health Foods Ltd and another

Reference: [1998] 1 WLR 830

Comment: Personal liability of a company director for losses caused by negligent misstatements made by the company. The decision of general significance in tort and company law has been commented on extensively in textbooks and applied in subsequent cases.

Court: House of Lords

Property

Name: Chiu Yin Lui v Wai Bun Chong

Reference: [2010] EWCA Civ 398

Comment: Whether a deed of assent was effective to transfer beneficial as well as legal title to property.

Court: Court of Appeal

Name: Hilmi & Associates Ltd v Pembridge Villas Freehold Ltd

Reference: [2010] EWCA Civ 314

Comment: Formal requirements for an initial notice for collective enfranchisement under Part I of the Leasehold Reform, Housing and Urban Development Act 1993

Court: Court of Appeal

Name: Vandon Court Freehold Limited v Justhold Limited
Reference: LON/OOBK/OCE/2008/0199 (20/4/2009)
Comment: Determination by the Leasehold Valuation Tribunal of the premium to be paid on collective enfranchisement and in particular whether the tenants are obliged to pay anything in respect of potential developments in the roof space and basement of the building.

Name: Pattle and Another v Secretary of State for Transport
Reference: [2009] UKUT 141 (LC)
Comment: It was held in a ground breaking decision that it was open to owners of an industrial site to advance, as part of their claim for compensation for a compulsory acquisition of part of the site, a claim for hypothetical rental losses allegedly sustained due to their failure to redevelop the site because of the threat of compulsory acquisition.

Name: Hall and Another v First Secretary of State and Another
Reference: [2007] EWHC 2083 (Ch)
Comment: Challenge to the decision of the Secretary of State to grant permission for development of site in Green Belt and compulsory purchase of land.
Court: Court of Appeal

Name: Vajpeyi v Yusaf
Reference: [2003] All ER (D) 128 (Sept)
Comment: Whether a presumption of resulting trust arose from a series of payments or whether they were to be treated as loans.
Court: High Court

Name: Uddin v Trustees of the Popular Central Mosque and Others
Reference: Lawtel AC9200510 (2/4/2003)
Comment: Dispute about the ownership of the premises of a mosque and findings on the construction of competing versions of a written agreement.
Court: High Court

Name: Allied Dunbar Assurance Plc v Homebase
Reference: [2002] 1P & CR 75
Comment: The issue was whether a landlord unreasonably refused to consent to an underletting at a rent less than the passing rent.
Court: Court of Appeal

Name: Clowes Developments (UK) Ltd v Mulchinock
Reference: [1998] 1 WLR 42
Comment: Inherent jurisdiction to vacate cautions. The decision has been the subject of extensive academic comment.
Court: High Court

Trusts and Estates

Name: Vajpeyi v Yusaf
Reference: [2003] All ER (D) 128 (Sept)
Comment: Whether a presumption of resulting trust arose from a series of payments or whether they were to be treated as loans.
Court: High Court

Offshore work & other areas

Name: Booth v Britannia Hotels Ltd

Reference: [2003] 1 Costs LR 43

Comment: Costs on an exaggerated claim. Although pre-dating the CPR provisions regarding the proportionality of costs, it remains an important decision.

Court: Court of Appeal

Recent Work

Other

- Substantial current and recent cases include:
 - a partnership dispute between pharmacists and involving related applications to the Adjudicator to HM Land Registry,
 - appeals from the Leasehold Valuation Tribunal to the Upper Tribunal (Lands Chamber) in enfranchisement claims,
 - intervening on behalf of a family company in divorce proceedings in the Family Division,
 - several partnership disputes involving solicitors and accountants,
 - a claim on a fidelity insurance policy against Lloyds,
 - several collective enfranchisement claims,
 - applications to the Companies Court for the reduction of share capital,
 - breach of warranty claims on share sale agreements,
 - claims under the Trusts of Land and Appointment of Trustees Act 1996,
 - right to light claims,
 - title and boundary claims,
 - disputes concerning agreements for the sale of land,
 - restrictive covenant claims, lease renewal claims,
 - a professional negligence claim against solicitors arising from a lease renewal,
 - claims based on overage agreements,
 - claims by office holders based on allegations of transactions at an undervalue,
 - claims based on the terms of business of bankers, and
 - claims for the rectification of contracts for the sale of land.

Articles and Publications

Date	Title	Contributors
February 2010	Thriving in the shadow <i>New Square Chambers - Legal Update - February 2010</i>	Gerard van Tonder
July 2008	Ashe v National Westminster Bank plc: let the lenders beware! <i>New Square Chambers - Legal Update - July 2008</i>	Gerard van Tonder