

Jeff Hardman

Called: 2012

"A sharp and tenacious junior with real nous."

Property Litigation - Legal 500 2020



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Practice Overview

Jeff Hardman has a very busy modern chancery practice specialising in all areas of property, insolvency (both corporate and personal) and company law. Despite only practising for five years, he is already recommended as a leading junior in his field within Legal 500 where he is described as "A sharp and tenacious junior with real nous." (Legal 500, 2020)

He also advises on a broad range of commercial litigation matters and disputes involving trusts, landlords & tenants and partnerships. He is fast developing a reputation for being a very hard working and accessible barrister. Most recently, Jeff appeared unled on behalf of a respondent, successfully discharging a freezing injunction and obtaining indemnity costs following an application which had been made *ex parte* in the High Court: *Tibbs -v- Tibbs* [2019] EWHC 2315 (Ch). In *Boulton v Queen Margaret's School, York Ltd* [2018] 10 WLUK 490, Jeff also appeared unled in the High Court, with his arguments described by Mr Justice Arnold as "ingenious" (para. 26). In *Regency (UK) Ltd v Albu-Swalin* [2019] 11 WLUK 278, Jeff appeared unled on behalf of the First Respondent before Mr Justice Chamberlain and successfully upheld HHJ Luba QC's decision to award aggravated and exemplary damages as well as indemnity costs against a landlord for unlawful eviction.

Jeff has a particular interest in complicated forfeiture claims and disputes which involve proprietary estoppel and allegations of fraud. He frequently appears in the County Court (Chancery Business), High Court (ChD & QBD), First-Tier Tribunal & Upper Tribunal (Lands Chamber). He accepts instructions via public access from institutional landlords, trustees, companies and members of the public.

Jeff advises and acts in traditional chancery matters including claims brought under the Inheritance (Provision for Family and Dependents) Act 1975. He is also regularly instructed in contentious domestic trust cases and has experience of rectification of wills, appointment of trustees, undue influence, breach of trust and matters relating to unincorporated associations.

Prior to the Bar, Jeff worked for a law firm in the Caribbean before joining a start-up in London developing a music streaming 'app' funded by Gazprom Media.

Jeff's recent reported cases include:

Tibbs -v- Tibbs [2019] EWHC 2315 (Ch): Appeared unled on behalf of the Respondent seeking to discharge a freezing injunction which had been obtained before Mr Justice Arnold on an *ex parte* basis. At the return hearing listed for one day before Deputy High Court Judge Ambrose, Jeff successfully argued that: (i) there had been no risk of dissipation; (ii) that there had been material non-disclosure and (iii) the application amounted to an abuse of process. The Respondent successfully recovered costs on an indemnity basis.

active in the law relating to neighbours and is regularly instructed in disputes involving boundaries, adverse possession, nuisance, easements and party walls. Jeff has extensive leasehold experience, including complicated forfeiture claims, service charges, dilapidations, lease extensions, break clauses, rent reviews, applications for the appointment of a manager and Right to Manage.

Jeff appears in ancillary relief proceedings on behalf of interveners, handles equitable claims, including co-ownership disputes and applications under the Trusts of Land and Appointment of Trustees Act 1996 based on constructive and/or resulting trusts and proprietary estoppel.

Jeff's recent property caseload includes:

- Acting for a Judgment Creditor as he sought to enforce a foreign judgment for €3,500,000 in the High Court, Queen's Bench Division.

- Successfully representing a commercial landlord in forfeiture proceedings before HHJ Bailey in the County Court in Central London where the tenant had counterclaimed for £220,000 loss of earnings for the alleged unlawful eviction.

- Appearing in a 2 day boundary dispute in the County Court in Eastbourne where it was alleged that an informal boundary agreement bound the parties.

- Successfully defending a large institutional landlord against a claim for unlawful eviction before HHJ Luba QC in the County Court at Central London.

- Appearing in numerous cases in the First-tier Tribunal within the last 12 months involving all manner of service charge disputes. Most recently, appearing in a 3 day trial where a leaseholder had challenged 6 years' worth of service charges on 56 different grounds.

Commercial Litigation

Jeff is regularly instructed by institutional landlords, local authorities and national housing associations in claims for urgent injunctive relief at short notice, particularly in connection with trespass, dissipation of assets, squatters, nuisance, enforcing leasehold covenants and anti-social behaviour. He provides advice and representation in a range of civil and commercial litigation involving the formation of contracts, misrepresentation and the supply of goods and services, claims in restitution, unjust enrichment and subrogation.

Company

Jeff has both contentious and non-contentious experience in matters straddling the areas of modern chancery and company law involving companies, directors and shareholders. He acts and advises on a range of partnership, LLP and company matters relating to unfair prejudice petitions, dissolution of partnerships,

partnership accounts and derivative actions. Jeff is particularly strong where company and partnership disputes involve property. Jeff makes regular appearances on bankruptcy and winding-up petitions, applications to set aside statutory demands and is familiar with administration orders, extension and removal orders.

Insolvency

Jeff regularly provides advice on a range of personal and corporate insolvency cases. In the last 12 months, he has acted for companies, creditors, individuals facing insolvency and insolvency practitioners in a variety of disputes.

His recent and current cases include:

- Advising an insolvency practitioner on the merits of pursuing a claim for £600,000 unpaid vat against a corporate customer.
- Successfully defending directors against a claim for breach of duty /misfeasance where it had been alleged that dividends of £120,000 had been paid whilst the company was balance sheet insolvent.
- Appearing before the Chancellor of the High Court to restrain a petition to wind up a company.
- Appearing before Chief Registrar Briggs to resist a debtor company's allegation that a petition debt was disputed on substantial grounds.
- Advising a bankrupt and his wife on the merits of an application to set aside a variety of transactions worth more than £800,000.00 alleged to have been made at an undervalue.

Cases

Name: The Manchester Ship Canal Company Ltd v Vauxhall Motors Ltd (formerly General Motors UK Ltd)

Reference: [2019] UKSC 46

Date: 23rd October 2019

Court: Supreme Court

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In 1962, the Manchester Ship Canal Company Ltd ("MSCC") reached agreement with Vauxhall Motors Ltd ("Vauxhall") in relation to the user of MSCC's land over which Vauxhall sought a right to discharge surface water and effluent into an adjacent canal. A land exchange dated 12 October 1962 conveyed some, but not all, of the relevant land and Vauxhall acquired the remaining rights by way of perpetual licence conditional upon payment of £50 annual rent and the performance of additional covenants. The licence also granted Vauxhall rights to construct, alter and maintain a spillway upon MSCC's land to enable discharge of surface water, along with an ancillary right of access.

Clause 5 of the licence contained a forfeiture provision engaged upon non-payment of rent or default in performance of Vauxhall's non-monetary obligations. Following non-payment, MSCC served a notice to terminate and forfeit the licence under clause 5 thereof. Vauxhall claimed relief from forfeiture which was granted at first instance and affirmed on appeal.

The Supreme Court's Analysis

The rationale for relief from forfeiture is given succinctly by Lord Wilberforce in *Shiloh Spinners Ltd v Harding* [1973] AC 691, at 723-724:

"[W]e should reaffirm the right of courts of equity in appropriate and limited cases to relieve against forfeiture for breach of covenant or condition where the primary object of the bargain is to secure a stated result which can effectively be attained when the matter comes before the court, and where the forfeiture provision is added by way of security for the production of that result."

MSCC submitted that equitable relief from forfeiture concerning land was available only for proprietary interests, so that merely possessory rights including all licences were excluded. The Supreme Court noted that numerous decisions concerning forfeiture of personalty admitted purely possessory rights within the scope of relief. Such rights included patent rights, leases of video editing equipment and a contractual power to appropriate shares charged by way of equitable mortgage, amongst others.

The question for the Court was whether this settled extension to possessory rights in the context of personalty was to be applied to possessory rights over land. The Court unanimously determined that such an extension was warranted. Licences of varying character, including for residence and those akin to easements but absent the requisite degree of exclusive user, are now susceptible to relief from forfeiture. However, practitioners should exercise caution in light of Lord Briggs's observation that the licence under consideration was "very unusual" because it granted virtually exclusive possession, a high degree of control over the relevant land and was granted in perpetuity. It remains to be seen if these qualities, particularly as regards perpetual grants, are strictly enforced at first instance.

Lord Briggs commented (obiter)[1] that the pre-condition that the right granted, whether over land or personalty, be perpetual may go too far in relation to *all* forms of property and particularly so in relation to land which is inherently a form of perpetual property.

As regards the division between proprietary and possessory rights, the Court approved Lewison LJ's reasoning in the Court below as to whether possessory rights will be generated by a licence. The bellweather for future assessments will be an application of the classic twofold criteria defining possession in *J A Pye*, requiring:

- (1) A sufficient degree of physical custody and control; and
- (2) An intention to exercise such custody and control on one's own behalf and for one's own benefit.[2]

A significant factor in the Court's determination that the licence gave rise to possessory rights was the degree of access retained by Vauxhall over the spillway from its own adjacent land for the purposes of servicing the drainage infrastructure. MSCC's rights to conduct maintenance in default of Vauxhall complying with its obligations or to reroute the spillway if required did not negative Vauxhall's possessory right. The grant of relief was upheld.

[1] MSCC v Vauxhall Judgment Paragraph 51

[2] J A Pye (Oxford) Ltd v Graham [2002] UKHL 30 applied by Lewison LJ at [59] and approved at [42] by Lord Briggs

Judge: Lord Carnwath, Lady Black, Lord Briggs, Lady Arden, Lord Kitchin

Comment:

This decision addresses the unprincipled lacuna between personal and real property as regards the rights courts are willing and permitted to safeguard through the relief from forfeiture jurisdiction. The decision recognises that valuable rights over land are often crafted falling short of full-bodied proprietary rights to exclusive user, but which nonetheless require safeguarding against trivial and remediable breaches of covenant.

Lady Arden's observation that some uncertainty in the application of relief is inevitable is true but the effect of the MSCC decision is to confine uncertainty to the Court's general discretion to grant relief and to the boundary between possessory and purely contractual rights. It is submitted that locating the outer limit of forfeiture at this point is both more principled and easier to define than the previous divide between proprietary and possessory rights which also led to a schism between varying rights over land.

Two points of interest emerge for the future:

(1) How will the Court's adapt relief in the face of ever-expanding categories of property such as cryptocurrencies which straddle the rights boundary between possessory and purely contractual?

(2) Will Courts of first instance restrictively apply the majorities' observations regarding the perpetuity of rights or adopt a more liberal line commensurate with broad justice on particular facts?

Articles

Date	Title	Contributors
18th April 2018	Case Analysis: Generator Developments Limited v Lidl UK GmbH [2018] EWCA Civ 396 Published In <i>New Square Chambers</i>	Jeff Hardman
11th September 2017	In brief: Assignment of cause of action not void for breaching the rules against champerty and maintenance (Casehub Ltd v Wolf Cola Ltd) Published In <i>Lexis PSL - September 2017</i>	Jeff Hardman