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BIOGRAPHY

Roger is highly experienced in all areas of real estate litigation and legal advice in England and Wales, particularly commercial real estate. His experience includes issues concerning the status of land (ownership, occupation) and buildings (fabric, operations, rent review) and also transactions concerning real estate (contracts, joint ventures, risk analysis). He advises developers, investors and occupiers including institutional investors, sovereign wealth funds, family offices, professional service firms and retailers. Business rates is an area of sub-specialist interest. Following his work in promoting the intervention by the British Property Federation and the Rating Surveyors' Association in a leading Supreme Court case, Roger was elected an Honorary Member of the Rating Surveyors' Association.

Roger is a Fellow of the Chartered Institute of Arbitrators, a CEDR accredited mediator and sits as a part-time tribunal judge in the Property Chamber.

Roger contributes articles and podcasts in the property press.

Q&A

How many cases have you won?

I don't keep a count. What matters are outcomes that add value for clients and that often means a negotiated solution. For example, I negotiated the settlement of litigation between joint venturers who had agreed to contribute money and expertise to add value to a central London investment. I acted for the investors who put in the money. The other side didn't contribute any expertise. They fell out badly. It was personally and professionally very difficult for the parties. Closing that deal and solving that difficulty was more satisfying than any "win".

What about advice outside of any claim?

That is core business for me. I have just dealt with an investor client whose tenants (a US law firm) wanted to assign in breach of the lease. The tenants' agents presented it as benign and not a worry. I was able to correct that impression for our clients.

What about managing risk?

Again, that is central to what my clients want. When a client of ours was looking to buy the debt, secured by the head tenant, on some long city leases, the head lessors threatened forfeiture. They wanted to take back the value in the long leases. The head tenant was in financial difficulty and so vulnerable. My advice to our clients that the forfeiture claim was a try on was critical to our client's decision to proceed with the deal. Massive value added. That is also really satisfying.

But you must have been to court?

Of course. If you want to settle you must prepare to fight. Sometimes you just have to. Last summer, our client, Tindall, was informed that its tenant Adda Hotels had, without consent, assigned a portfolio of 10 Hilton Hotel leases to £1 companies without consent. This was intended to get Hilton out of a parent company guarantee of Adda. We had to go to the High Court and the Court of Appeal to clear up that issue. We were successful and all in 9 breathless weeks.

Have you ever done any good?

Life is a constant pursuit of justice. Obtaining an injunction to stop a neighbour's building works on Saturdays that interfered with a private client's recovery from chemotherapy was an example. After the court made the order, the client wrote me a touching note saying it had made a difference. He passed away soon after. Also, I advised the Otto Schiff Housing Association on clearing restrictive

covenants from the title to the site. This enabled that charity to realise full value from the site. Those funds have been re-invested in excellent charitable projects.

Would it help to see the dispute from the bench?

It certainly does. I hear land registration cases on a part time basis in the Property Chamber of the First-tier Tribunal. The subject matter is different from my day job. But the principles of furthering the client's case by assisting the judge to identify issues and relevant evidence are much easier to apply in practice with an awareness of what the judge perceives.

And what's next?

I have a pipeline in my pipeline. It is a case about the rateable value of a pipeline going to a hearing next year. Quite a lot of money turns on it. I lead our centre of excellence in rating. It is a niche area and an offering to clients which differentiates us.

AREAS OF FOCUS

- Logistics & Industrial

ADMISSIONS

- England and Wales

RELATED PRACTICE AREAS

- Real Estate Disputes
- Commercial Real Estate
- Litigation & Dispute Resolution
- Israel Practice
- Logistics & Industrial
- Hotels and Hospitality
- Real Estate Retail
- Business & Commercial Disputes
- Real Estate
- Retail & Consumer Products

EXPERIENCE

- Acting for a **private equity client**, the guarantor of a lease of a former hospital. Following the disclaimer of the lease by the tenant we advised on liabilities going forward and how to mitigate them.
- Representing **Tesco** in the ATM rating litigation concerning the rateability of the sites of ATM machines hosted by food stores. Our representation began before Tesco's case was heard in the first instance Valuation Tribunal and continued through the appeal level Upper Tribunal and then to the Court of Appeal and ultimately the UK Supreme Court. In both Court of Appeal and the Supreme Court, Tesco's case was upheld in its entirety.
- Representing **Canary Wharf** in a rating appeal to the Upper Tribunal concerning the rateability of floors of a tower building during refurbishment.
- Advising **the owners** of an iconic London building as to vacant possession strategy for parts of the building.
- Advising **a fund** in perfecting title to unregistered land forming part of a site.
- Advising **utility client** on its rights to perform works under statutory powers having regard to the assertion by parties affected of rights under Article 9 of the European Convention on Human Rights to manifest their religion.
- Representing **a statutory corporation** in negotiating a settlement with a Government Department of contractual liabilities involving the financial management provisions of the corporation's founding legislation.
- Representing **a landlord of premises** in obtaining vacant possession from a tenant of niche business premises from the administrators appointed by the US-based private equity house who owned the tenant company.
- Acting for **a restaurant operator** in resisting a claim for rent unpaid as a consequence of the response to the pandemic.
- Advising **the developer** of an ultra high end residential development as to its business rates and council tax liabilities.

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Do you want to know how much your business will be paying in business rates from 1 April 2023?

It is a good question because the new rating list; the first for 6 years, takes effect on that day. The rateable values that are being compiled reflect letting values (more or less) as at 1 April 2021.

News

Nov 18, 2022

Roger Cohen quoted in ‘Hospitality & Catering News’ on Autumn Budget