

## REAL ESTATE DISPUTES

### OVERVIEW

Whether you are a developer, investor, financial institution, lender, borrower, landlord, tenant, retailer, property manager or operator, we can help you avoid real estate disputes or successfully resolve them.

Our market leading real estate disputes team represents clients in litigation, ADR (Alternative Dispute Resolution), and counselling in matters arising out of complex real estate, development, acquisition, financing, leasing and land use. We pride ourselves on preserving and adding value to your business with our ability to advise not only on mainstream commercial property disputes, but also in respect to niche areas, often acting in cases which shape the law or create new legislation.

In addition to up-to-date real estate litigation experience, we are experienced in the full range of dispute resolution methods helping to meet clients' needs with alternative means of resolving real estate disputes, including mediation.

Our global real estate disputes team advises clients in the UK, the U.S., Germany, the Middle East, Hong Kong SAR, and Singapore. For more than a decade, we have been independently ranked as the No. 1 real estate disputes practice by the two leading legal directories, Legal 500 UK and Chambers & Partners UK.

We advise clients in virtually every type of real estate litigation or ADR matter, including:

- [Real Estate Partnership/Joint Ventures/Private Equity](#)
- [Development and Acquisition](#)
- [Real Estate Finance](#)
- Land Use, including Rights of Light and other development constraints
- [Zoning/Planning Control](#)
- Complex Commercial Leases
- Infrastructure/Major Projects
- Real Estate Insurance

- Real Estate Insolvency
- Eminent Domain and Condemnation
- Management disputes
- Leasing/asset management
- [Hotel, Arena and Leisure](#)
- [Environmental/Toxic Tort Litigation](#)
- Professional Negligence
- Telecommunications

Our work is delivered efficiently and with cost predictability through the considered development of the best resources and technologies, using Artificial Intelligence and other emerging technologies where appropriate.

## MEET THE TEAM



### **Akhil Markanday**

Partner and Global Practice Group  
Leader - Arbitration, Real Estate and  
Construction Disputes (ARC), London

[akhil.markanday@bcplaw.com](mailto:akhil.markanday@bcplaw.com)

[+44 \(0\) 20 3400 4344](tel:+442034004344)



### **Noah M. Weissman**

Partner and Deputy Leader, Real Estate  
Disputes, New York

[noah.weissman@bcplaw.com](mailto:noah.weissman@bcplaw.com)

[+1 212 541 2028](tel:+12125412028)

## EXPERIENCE

**Intervention in a Supreme Court Business Rates Case Overturning a Court Of Appeal Decision**

Location: Nationwide UK

Successfully intervened in the case of *Newbiggin v Monk* on behalf of the British Property Federation and Ratepayers Association, in which the Supreme Court overturned the Court of Appeal decision, ruling that a commercial building in the course of redevelopment does not have to be valued as if it were still usable. This case has had far-reaching ramifications, not only for developers, but also for urban regeneration and the public in general. This was ranked the “most important property case of 2017” by Estates Gazette.

### **Representation of Real Estate Joint Venture/Private Equity in Litigation**

Location: U.S.

Represent members of Real Estate Private Equity/Joint Venture in litigation over property mismanagement, freeze-out merger, and breach of fiduciary duty by managing member in connection with major New York real estate portfolio.

### **Ground-Breaking Administration Case**

Location: Nationwide UK

Successful representation of British Land, Hammerson, Intu and Land Securities in the landmark Court of Appeal decision that ordered Game, as tenant in administration, to pay as administration expenses all the rents due the landlord.

### **Representation of Hotel and Leisure Company in Breach of Contract**

Location: U.S.

Represent a hotel company in breach of contract and fraud claims against franchisee and management company arising from false reporting of hotel occupancy and mismanagement under preferred guest program by hotel franchisee.

### **Appeal Against ATM Business Rates**

Location: Nationwide UK

We acted for Tesco in the appeal against assessments for rating made by the Valuation Office Agency for ATM machines hosted by food stores, further to a decision by the Valuation Office that saw Tesco and other retailers burdened with retrospective rates liabilities and extra liabilities going forward. This case is being monitored by many retailers, for example concession areas in large department stores, who could be significantly impacted by the Court of Appeal decision.

### **Representation of Hotel and Leisure Company in Acquisitions**

Location: U.S.

Represent Hotel company in connection with claims of breach of contract and letter of intent, exclusivity, and non-disclosure agreement in connection with acquisition of premier hotel and residential complex.

**Advising on Several High-Risk, High-Value Regeneration Schemes**, including:

- Wood Wharf development (mixed use scheme with over 3,300 homes and 2 million sq ft of office space in Canary Wharf, London);
- South Bank Centre development of Shell Centre site in central London;
- Paradise Circus development in Birmingham city centre; and
- Whiteley's shopping centre development near Bayswater, London.

**Defeated Claims of Restrictive Covenant Issues for Electric Utility**

Location: U.S.

Represented electric utility in defeating claim that construction of a major electric utility substation would violate a restrictive covenant in the chain of title barring noxious uses.

**Successful Representation of Owners of Iconic Central London Skyscraper**

Location: London, UK

Acting for Almacantar, the developer of the iconic City Point building, in successfully defending an interim injunction claim brought by its tenant concerning refurbishment of the building.

**Successful Representation of State Economic Development Agency in Using Eminent Domain for New Construction**

Location: U.S.

Represented state economic development agency in defeating constitutional and statutory challenges to the use of eminent domain to construct a new arena, apartment buildings and office buildings and, in a different case, a new campus for a private university.

**Representation of Commercial Tenant in Lease Terms**

Location: U.S.

Represented commercial tenant operating restaurant and entertainment facility in Casino and Hotel over permitted use, quiet enjoyment, and lease term options.

**Representation of Real Estate Developer in Construction Litigation**

Location: U.S.

Represented real estate developer in connection with litigation arising from real estate assemblage and development and construction of New York hotel and residential building.

### **Representation of Sports and Entertainment Venue in Dispute RE Breach of Lease**

Location: U.S.

Represented one of the world's premier sports and entertainment venue management companies in dispute with sports team and municipality over breach of lease for use of arena/facility for home games.

### **Representation of Management/Real Estate Partnership, Joint Venture, Private Equity in Litigation**

Location: U.S.

Represent major real estate investment, management and development company in Los Angeles in litigation with one of its LLC members. The cases involve disputes over ownership interests in various LLCs and partnerships and management of one of the office building in which the investor holds an interest.

### **Representation of The Regional Authority of Public Transit in a Major Infrastructure Project**

Location: U.S.

Acted as counsel for the Regional Transportation District in a three-panel-member three-week arbitration against a design/build contractor on delay and damage claims relating to RTD's contract for the construction of a 13-mile commuter rail project.

### **Successful Representation of Commercial Landlord in Complex Commercial Lease Case**

Location: U.S.

Represented real estate investment company in federal court in a dispute arising out of a restrictive use covenant in an antiquated shopping center lease inherited by Landlord client. We prevailed in obtaining an order denying entry of a preliminary injunction and prevailed in the Tenth Circuit obtaining an affirmance of that order. We then won a summary judgment and finally settled the case under an arrangement where the plaintiff is to pay Landlord a portion of its attorney fees.

### **Successful Negotiation of an Eminent Domain Matter for Telecommunications Client**

Location: U.S.

In an eminent domain proceeding brought by the Colorado Department of Transportation, on behalf of a telecommunications client, we successfully negotiated an amendment to the condemnation

petition and entry of a rule and order providing that the highway department condemnation shall not impact any right of way, utility lines, or other interest the client may have in the subject property.

## RELATED INSIGHTS

Insights

Mar 21, 2024

### **The Evolving Real Estate and Construction Disputes Landscape**

As part of Riyadh International Disputes Week (RIDW), Horizons & Co. and BCLP hosted a discussion on the evolving real estate and construction dispute resolution landscape in the Kingdom of Saudi Arabia and wider region. This interactive discussion involved questions from the audience throughout the session and resulted in many meaningful points being raised. Below is a high-level takeaway of the key issues discussed and points raised.

Events

Mar 05, 2024

### **Of Counsel Suzanne Berger to Present at PLI's 2024 Commercial Real Estate Financing Program**

Insights

Dec 01, 2023

### **Looking Forward - the future of (compulsory) ADR in business disputes and the impact of Churchill v Merthyr Tydfil**

Considered as a cheaper, quicker and less stressful mode of dispute resolution, alternative dispute resolution ("ADR") is no longer seen as an "alternative", and indeed has been re-named "NDR" (negotiated dispute resolution) to reflect that. Instead, it is becoming an integral part of the dispute resolution process – one which is focussed on achieving earlier and less costly resolution over which parties have control rather than engaging in an often expensive, drawn-out dispute before the court with an uncertain outcome. Here we explore where its future lies and what this means for your business.

Insights

Nov 30, 2023

### **Into the unknown - Supreme Court confirms parameters for injunctive relief against trespassing newcomers**

Injunctions against "persons unknown" have recently garnered much attention, being deployed in both traditional scenarios such as to prevent traveller groups trespassing on land, and also against protestors or urban explorer threats. Lower Courts grappled with whether such injunctions – wide in scope and carrying serious consequences for breach – could be granted on a permanent basis against newcomers. The Supreme Court, agreeing with the Court of Appeal's conclusion albeit for different reasons, has confirmed they can.

News

Oct 19, 2023

### **Chambers UK Ranks BCLP in 41 practice areas and recognizes 74 lawyers**

Awards

Oct 04, 2023

## **The Legal 500 UK ranks BCLP in 54 practice areas and recognizes 74 lawyers as “leading individuals”**

Insights

Sep 29, 2023

## **Briefcase 2023 Quarter 3: Key Real Estate Cases and updates**

Insights

Sep 11, 2023

## **RAAC – What it is and what it means**

As schools prepared to reopen this September after the summer break, hundreds were informed that, due to the use of Reinforced Autoclaved Aerated Concrete (RAAC) in their buildings (and its current state and condition), this would not be the case and they would need to remain closed or find alternative accommodation until remedial works could be undertaken. There are likely to be further closures in the future, as more schools are found to contain RAAC in need of urgent remedial works. It has recently become apparent that other buildings have been also affected by RAAC issues, for example court buildings and hospitals. This Insight takes a closer look at RAAC, why it has become an issue now and considers practical steps for those affected by RAAC.

Insights

Jul 20, 2023

## **Developers can breathe a sigh of relief (for now) as the Court of Appeal plugs a gap in the Telecoms Code**

Last year the Upper Tribunal held that holders of concurrent leases that are subject to pre-existing Telecoms Code agreements cannot be treated as a ‘party to the agreement’, effectively sterilising their ability to terminate or modify/renew those Code agreements. Concurrent leaseholders requiring the removal or relocation of telecommunications equipment to facilitate a development were particularly badly affected, as they were left at the mercy of the operators, or faced with costly revisions to adapt their scheme around the apparatus and associated rights. The Court of Appeal has unanimously overturned the Upper Tribunal’s decision, bringing welcome relief and clarity for both site providers and telecoms operators.