



“His attention to detail is superb and he has an ability to grasp difficult and detailed facts quickly. Ability to remain calm under pressure.” Legal 500 2021

“Whilst always meticulously prepared, he is also extremely good on his feet.”
Legal 500 2020

Niraj Modha specialises in commercial, construction, and property litigation and arbitration.

Niraj has considerable experience in the Chancery and Queen’s Bench Divisions of the High Court and the First-tier Tribunal (Property Chamber). He has appeared in the Court of Appeal as sole counsel and the Supreme Court. Niraj is a Fellow of the Chartered Institute of Arbitrators and sits as an arbitrator. He is a member of the ABTA arbitration panel and the CIArb Business Arbitration Scheme.

PRACTICE AREAS

- Arbitration
- Commercial
- Construction
- Property
- Insolvency
- Professional Negligence

PRACTICE AREAS

ARBITRATION

Niraj accepts both instructions as counsel and nominations for appointment as arbitrator in all commercial and construction arbitration proceedings. He is a Fellow of the Chartered Institute of Arbitrators and has spoken at ICC YAF and other events on the theory and procedures in international arbitration.

Niraj has been appointed as an arbitrator on more than 20 occasions within the past three years. He is a member of the ABTA arbitration panel and the CI Arb Business Arbitration Scheme among others.

The most recent cases in which Niraj has been involved as arbitrator or counsel include:

- A franchising dispute in respect of an online trading platform (Hunt Arbitration Service, London seat)
- A software licensing dispute between licensor and reseller (ad hoc, London seat)
- A claim by engineering consultancy for payment in debt or damages for breach of contract (LCIA, London seat)
- A property development dispute between employer and contractor (CI Arb, London seat)
- Various arbitrations between travellers/consumers and travel agents/tour operators (Hunt ADR, London seat)

COMMERCIAL

Niraj has appeared as sole counsel in the High Court on several commercial and company law matters. He is familiar with interim applications including applications for security for costs, strike out, and summary judgment. He has appeared successfully in the Circuit Commercial Court, the Business List, and the Insolvency and Companies List, often against more experienced counsel. Niraj has argued and defended applications for interim payments, default judgment, setting aside, and the enforcement of foreign judgments.

Niraj has recently:

- Obtained interim injunctive relief on behalf of a minority shareholder in a joint venture property development worth c£20 million: *Homes of England Ltd v Horsham Holdings Ltd & ors* [2019] EWHC 2429 (Ch)
- Acted for a property developer company in claims for breaches of shareholders' agreements and fiduciary duties seeking an account, contractual and equitable damages, and an account of profits: *trial imminent*
- Advised and acted for a marine surveyor in Singapore in a multi-million dollar claim for damages following his de-accreditation by an institution responsible for the inspection and audit of the transport and storage of chemicals: *trial imminent*.
- Acted as sole counsel in an arbitration between a landowner and property developer valued at more than £2 million relating to the construction of luxury pre-fabricated homes (ad hoc, London seat).
- Advised on the effectiveness of an arbitration agreement contained within a contract between two entities in the banking industry in Hong Kong (ICC Rules, London seat)

- Advised on prospects in potential arbitration proceedings relating to a joint venture dispute between a human resources company and a local entity (ICC Rules, Doha seat).
- Appeared in the Court of Appeal in a case which establishes that it is not typically possible to appeal a cross-undertaking in damages even when this was arguable imposed incorrectly: *Schettini v Silvestri* [2019] EWCA Civ 349.
- Represented an individual seeking a vesting order under Companies Act 2006 following the dissolution of a company which held a valuable lease of property: *Leon v Her Majesty's Attorney General & ors* [2018] EWHC 3026 (Ch), subsequently appealed [2019] EWCA Civ 2047.
- Secured the recovery of a six-figure sum representing an estate agent's commission in its claim against vendors, the agent having introduced a purchaser to the transaction with the vendors.
- Acted successfully for the claimant in a claim for rescission and damages for misrepresentation following her purchase of an accident-damaged vehicle from a local car dealership.
- Acted successfully for unincorporated associations in disputes relating to the election and unlawful removal of representatives.

Niraj has also advised recently on the enforceability of foreign judgments in England and Wales. He has attended and delivered lectures at arbitration events and seminars, most recently in Rome (International Bar Association Annual Conference) and Goa (ICC YAF South Asia Regional Conference).

CONSTRUCTION

Niraj advises and represents contractors, local authorities, developers, and project financiers in a variety of disputes arising out of construction. Niraj has recently:

- Advised and settled submissions in adjudications under the RICS Scheme Rules (CEDR, London seat).
- Advised and drafted statements of a case in a matter falling under the Protocol for Construction and Engineering Disputes in respect of a substantial claim against a contractor for delay and wrongful termination.
- Acted at a three-day trial for homeowners in a claim against a contractor for breach of contract following the demolition of and failure to rebuild a property.
- Represented a landowner in a three-day arbitration regarding the construction of luxury pre-fabricated homes (ad hoc, London seat).
- Assisted in an arbitration involving an East African government and a European contractor engaged in a road-building project (ICC, Paris seat).
- Assisted in an arbitration between an Asian supplier and an African telecommunications provider (AAA Commercial Rules, New York seat).
- Settled proceedings on behalf of a long leaseholder in his claim for damages for breach of contract, breach of statutory duty, and misrepresentation following a builder's failure to remedy defects.
- Advised a developer on prospects of avoiding interim relief and an award of damages in relation to its requirement for access over adjoining land for the purposes of redevelopment

PROPERTY

Niraj acts for property investors, developers, large London estates, professional landlords, housing associations, management companies, residents associations, and tenants. He welcomes instructions across all aspects of real property and commercial landlord and tenant law.

Recently Niraj has:

- Acted for a landowner in a claim against (trespassers) following the landowner's purchase of a substantial 100-acre site in south west England comprising a commercial wedding business and equestrian facilities.
- Acted for a freeholder in a substantial claim for dilapidations against a car parts and equipment retailer (its former tenant) in the Technology and Construction Court.
- Obtained declaratory relief and costs for homeowners in Suffolk following a dispute between neighbours relating to the nature and extent of a right of way between their properties.
- Advised and represented clients at multi-day trials in claims involving proprietary estoppel and constructive trusts.
- Settled a Defence on behalf of a regulated tenant in a claim for possession by a landlord alleging trespass over land demised to him or annexed to his tenancy by way of encroachment.
- Settled Particulars of Claim for homeowners alleging trespass and damage to residential property.
- Represented the registered proprietor in a four-day trial at Central London (Chancery List) seeking the setting aside of an alleged equitable charge and removal of a restriction at HMLR (settled on the first day).
- Acted on behalf of receivers seeking possession of residential property occupied by assured shorthold tenants claiming various legal and equitable rights.
- Advised on the principles of equitable charges in advance of a hearing before the Adjudicator to the Land Registry.
- Successfully represented a commercial tenant in a claim for breaches of the covenant for quiet enjoyment and the implied covenant on a landlord to prosecute an insurance claim with proper speed and diligence, resulting in substantial damages for tens of thousands of pounds.
- Successfully represented a commercial tenant in a claim for a new lease under the 1954 Act which was opposed by a London Borough on the ground of redevelopment.
- Advised on and settled claims under the Landlord and Tenant Act.
- Successfully acted on behalf of landlords and tenants in disrepair claims involving issues inter alia repudiatory breach, fitness for human habitation, and infestation.
- Advised, drafted statements of case, and successfully appeared at trial in claims involving succession under the Rent Act 1977.
- Represented commercial landlords and tenants in claims for forfeiture, rent arrears, injunctions, and damages for harassment and unlawful eviction.
- Obtained possession orders for commercial and residential landlords against Rent Act, secure, and assured tenants. Secured interim possession orders and outright orders against trespassers of

commercial units and residential properties in and around Greater London.

- Secured interim possession orders and outright orders against trespassers of commercial units and residential properties in and around Greater London.
- Advised on the strategy, procedure, and effectiveness of notices under sections 8 and 21 Housing Act 1988, tenancy deposits, and possession claims generally.

INSOLVENCY

Niraj deals with insolvency matters which arise out of his Commercial, Construction, and Property practice generally. Niraj has:

- Obtained an injunction to restrain the presentation of a winding-up petition.
- Represented a lower league football club which avoided insolvency at a winding-up hearing.
- Successfully represented clients in defeating bankruptcy petitions and setting aside statutory demands.
- Acted for a petitioner in a bankruptcy claim against an individual who had failed to pay the wasted costs of a withdrawn claim.
- Advised and represented a trustee in bankruptcy in proceedings involving buy-to-let property.
- Acted for receivers seeking possession against sub-tenants following the bankruptcy of the mortgagor landlord.
- Advised receivers on their powers under statute and mortgage instruments.

PROFESSIONAL NEGLIGENCE

Niraj has:

- Defended architects and accountants in claims for damages for professional negligence.
- Represented mortgage brokers in proceedings brought by a borrower (successfully resolved at mediation).
- Settled claims against solicitors following omissions and failures during the course of the conveyancing process.
- Advised on the merits of a professional negligence claim by residential owners against their conveyancing solicitors (various).

CASES

NOTABLE CASES

Schettini v Silvestri [2019] EWCA Civ 349; [2019] 2 WLUK 119

Instructed as sole counsel. This case deals with the principles to be applied when a party seeks to be released from an undertaking and whether it is possible to appeal a cross-undertaking even when this was arguably imposed incorrectly.

Homes of England v Horsham Holdings & ors [2019] WLUK 578

Instructed as sole counsel. This case involved the grant of an interim injunction to a minority shareholder who was petitioning for unfair prejudice in the underlying proceedings, where there was a seriously arguable case that the majority shareholders were conducting business which was unfairly prejudicial to the petitioner.

Leon v Her Majesty's Attorney General & Others [2018] EWHC 3026 (Ch)

Instructed as sole counsel. This case establishes the principles that a Court must apply when an individual seeks a vesting order under the Companies Act 2006 following the dissolution and striking off of a company which held a long lease of residential property.

Fairway Properties v Pindoria (County Court at Central London, Chancery List) (2017)

Succeeded in establishing a prescriptive easement between two commercial properties in Stanmore following a four-day trial.

LPA Receivers v W & M (County Court at Winchester) (2015)

Successful on appeal before the circuit judge in a claim for possession by receivers of property that had been sublet by an associate of the mortgagor; argued that receivers were entitled to serve notice on behalf of the 'landlord' within the meaning of s.45 Housing Act 1988 despite the lease to the associate.

Regina (Eastenders Cash & Carry Plc & Others) v Revenue & Customs Commissioners & Regina (First Stop Wholesale Ltd) v Same [2014] UKSC 34; [2014] 2 WLR 1580

Instructed by the Respondent (Eastenders) and Appellant (First Stop) as second junior in appeals to the Supreme Court regarding the seizure and detention of property by HMRC.

RECOMMENDATIONS

"Whilst always meticulously prepared, he is also extremely good on his feet."

Legal 500 2020 (Property Litigation)

APPOINTMENTS

- Arbitrator, ABTA Arbitration Scheme
- Arbitrator, CIArb Business Arbitration Scheme

AWARDS

- Scholarship in Private Dispute Resolution, Worshipful Company of Arbitrators (2016)
- Levitt Scholarship for pupillage, Lincoln's Inn (2010)
- Buchanan Prize for BVC results, Lincoln's Inn (2010)

- 3 Verulam Buildings Prize for the best overall performance, City Law School (2009)
 - Hardwicke Entrance Award, Lincoln's Inn (2009)
 - Lord Denning Scholarship for the BVC year, Lincoln's Inn (2009)
 - Lord Haldane Scholarship for the CPE year, Lincoln's Inn (2008)
 - Titular Scholarship, Robinson College (2006)
 - College Prize, Robinson College (2006)
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QUALIFICATIONS

- Diploma in International Commercial Arbitration (2016)
 - BVC (Outstanding), BPP Law School, London (2010)
 - MA (Cantab) (2010)
 - CPE (Distinction), City Law School, London (2009)
 - Qualified Teacher Status (2007)
 - BA (First Class Honours), Robinson College, Cambridge (2006)
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ADDITIONAL INFORMATION

MEMBERSHIPS

- Fellow of the Chartered Institute of Arbitrators (FCIArb)
- Chartered Institute of Arbitrators
- International Bar Association
- Chancery Bar Association
- Property Bar Association
- Young International Arbitration Group
- Young Arbitrators Forum

LANGUAGES

- English
- German
- Gujarati

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