



Elena T. McDermott

Associate

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Elena McDermott is an associate in Herrick's Litigation Department, where she focuses her practice in complex commercial and real estate litigation.

Prior to joining Herrick, Elena was an associate at Winston & Strawn LLP, and a law clerk for Judge Helen E. Hoens of the New Jersey Supreme Court.

Services

- Litigation
- Business Litigation
- Real Estate Litigation & Dispute Resolution
- Employment Litigation
- Restructuring & Bankruptcy

Education

- University of Pennsylvania Law School (J.D., 2010)
 - Senior Editor, University of Pennsylvania Law Review
 - Member, Moot Court Board
- Villanova University (B.A., *cum laude*, 2007)

Matters

Pharmaceutical Company – Consumer Fraud Class Action Dismissed with Prejudice

Achieved a significant victory in New Jersey federal court on behalf of a pharmaceutical company, securing the dismissal of our client from a putative class action alleging violations of consumer fraud laws in the marketing of product. Finding that the plaintiffs had failed to remedy basic pleading deficiencies in their original complaint, dismissed for lack of jurisdiction and failure to state a claim, the court dismissed the amended complaint with prejudice since “further amendment would be futile.”

In re Boston Generating LLC, et al. (S.D.N.Y.)

Representing numerous defendants in fraudulent conveyance action by the liquidating trust arising from a \$2 billion leveraged recapitalization.

Real Estate Developers - Breach of Promissory Note and Fraudulent Conveyance Claims

Representing real estate developers in their efforts to pursue damages in excess of \$10 million against the estate of a former “asset rich but cash poor” business partner who had defaulted on a short term, multimillion dollar loan - originally guaranteed and later acquired by our clients - for the purpose of co-investing in real estate deals. In addition to a claim for breach of a promissory note, this litigation includes multiple fraudulent conveyance claims

against the executors of the estate as well as a myriad of shell entities we allege were created to receive the estate's assets - including a large diamond manufacturing businesses and substantial real estate holdings - in an effort to avoid creditors' claims.

Commercial Lenders - Defense of Conversion, Unjust Enrichment and Fraud Claims

Defense of commercial lenders in litigation filed in New York state court by a former employee alleging our clients wrongfully retained certain funds belonging to the plaintiff. This action, which involves related litigation filed in China and Singapore, includes claims for fraud, conversion, conspiracy to commit fraud, breach of fiduciary duty and breach of article 4 of the UCC Code. We currently are awaiting a ruling on our December 2014 motion to dismiss, in which we argue that the lawsuit is time barred and fails to state a cause of action.

Real Estate Investment Fund - Action to Foreclose on \$39.5 Million Mortgage Secured by New Jersey Office Building

Herrick delivered a series of important victories on behalf of a real estate investment joint venture in hard fought litigation to foreclose on a \$39.5 million mortgage secured by an Edison, New Jersey office building. After obtaining rulings that struck or dismissed all of the defendant debtors' affirmative defenses and the majority of their counterclaims and third-party claims, the firm won the appointment of a special fiscal agent to oversee the receipt and disbursement of all future revenue from the building as well as an order requiring the return of all misappropriated funds. In the wake of these successes, the parties were able to reach a settlement on extremely favorable terms for the client.

Multinational Food & Beverage Company - Successful Defense in New Jersey Franchise Practices Litigation

Successfully defended the U.S. affiliate of a multinational food & beverage company sued in New Jersey federal court by a distributor alleging violation of the state's Franchise Practices Act. In both the district court and on appeal to the Third Circuit, Herrick delivered key victories in opposing the plaintiff's efforts to secure an injunction preventing our client from effecting its contractual right not to renew an exclusive distribution agreement between the parties. In the district court, we obtained rulings partially dismissing the complaint, denying plaintiff's motion for a preliminary injunction, and denying plaintiff's motion for an injunction pending its appeal to the U.S. Court of Appeals for the Third Circuit. Following expedited briefing, the appellate court found in our client's favor, affirming the district court's rulings. In light of these developments, the parties ultimately reached a settlement and stipulated to the dismissal of this litigation.

Property Buyers - Appellate Victory in Specific Performance Dispute

Herrick secured an appellate victory in the Superior Court of New Jersey, Appellate Division on behalf of the buyers of a multi-million dollar custom-built home whose specific performance claim against a contractor who had deviated from the contracted plans had been dismissed by the trial court. The appellate court reversed, directing the trial court to order specific performance with an escrow to be established at closing to cover any damages. Herrick continues to represent the clients in litigating their damage claims.

Special Servicer - Motion for Summary Judgment Granted, Lender Liability and Breach of Good Faith Claims Dismissed

Successful defense of the special servicer of an \$18 million loan secured by a Parsippany, New Jersey hotel property against the debtor's claims of fraud, lender liability and breach of good faith. In December 2014, the court granted our motion for summary judgment, dismissing all claims against our client.