



Scott T. Tross

Partner; Co-Chair, Real Estate Litigation & Dispute Resolution; Member, Executive Committee

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Scott Tross is co-chair of the firm's Real Estate Litigation & Dispute Resolution Practice Group and a member of the firm's Executive Committee.

Scott focuses his practice in the areas of real estate, creditor's rights and securities litigation. An experienced trial and appellate lawyer in New York and New Jersey, Scott has tried more than two dozen cases to verdict and argued a like number of appeals. He is also an acknowledged leader in foreclosure law, having foreclosed billions of dollars in commercial real estate mortgages for banks, insurance companies, hedge funds, investment banks and servicers of securitized debt. His seminal treatise, *New Jersey Foreclosure Law and Practice*, is a go-to resource on the subject, which is regularly used by the state's judges and legal practitioners.

Scott has been consistently ranked as one of New Jersey's leading commercial litigators by *Chambers USA* (2013-2019).

Trial and Appellate Successes

Clients benefit from Scott's combination of experience, intellect and street smarts, which has led to successes in high-stakes cases, including:

- Reversal in the New Jersey Supreme Court of an Appellate Division decision declaring default rate interest and late charges to be unenforceable
- Dismissal of securities claims filed in connection with the \$25 billion leveraged buyout of RJR Nabisco
- Reversal in New York's Appellate Division of a \$242 million judgment that would have wiped out a banking client's interest in a Manhattan hotel
- Collection of more than \$35 million in defaulted loans from former Penthouse publisher Robert Guccione
- Settlement of a class action lawsuit filed by replacement players against a major league baseball team
- Dismissal of a lawsuit against a global entertainment company seeking an accounting and money damages
- Procurement of a judgment against Mexican boxer Julio Cesar Chavez
- Resolution of a whistleblower claim filed against a corporate client
- Dismissal of a malpractice claim against one of the nation's largest law firms

Services

- Litigation
- Alternative Dispute Resolution

- Employment Litigation
- Real Estate Litigation & Dispute Resolution
- Securities Litigation and Enforcement
- Real Estate Restructuring & Foreclosures
- Business Litigation

Education

- Harvard Law School (J.D., 1981)
- Yale University (B.A., *summa cum laude*, 1978)
 - Phi Beta Kappa

Accolades



Chambers USA, 2013 - 2019

Herrick, Feinstein LLP Wins New Jersey Law Journal's Commercial Litigation Department of the Year-Finalist

Matters

Special Servicer for \$124 Million Mortgage Loan - Foreclosure and Ancillary Litigation

Representing the special servicer for a \$124 million mortgage loan encumbering the Mall at the Source, a shopping center located in Westbury, New York. Herrick prosecuted a foreclosure action on the property to conclusion, obtaining a \$145 million judgment against the property owner, and represented the client as the successful bidder at the foreclosure sale. The firm is also handling certain ancillary litigation relating to a purchase option held by our client on adjoining property, and obtained an appellate court decision that thwarted an attempt by the holder of a mortgage on the adjoining property from extinguishing the purchase option through foreclosure proceedings.

Special Servicer - Litigation to Collect over \$100 Million in Loans Secured by Campground Sites

Represented a commercial mortgage special servicer in its efforts to collect amounts due under two loans for \$75 million and \$38 million, secured by campground sites located throughout the country. Our representation of the client involved seven foreclosure actions, filed in both New Jersey and New York state courts, through which we have taken title to all seven properties. In the course of prosecuting these actions, we obtained an important decision from the Appellate Division, enforcing our client's standard pre-negotiation agreement - an agreement routinely obtained by lenders to avoid potential lender liability claims.

Condominium Developer - Dispute with Borough of Jamesburg Favorably Resolved

Successfully represented the developer of 42 newly completed residential condominium units located in Monroe Township, NJ in challenging the Borough of Jamesburg's refusal to accept attempts to register the units as rentals, an issue critical for the closing of a pending sale of the property to a third-party buyer. This dispute was resolved amicably soon after filing suit in the Superior Court of New Jersey under an agreement that will allow the client to receive

rental unit licenses after resubmitting applications to the Borough along with all applicable registration fees.

Real Estate Finance Company - Entry and Collection of \$12 Million Judgment

Herrick obtained the entry of a judgment totaling approximately \$12 million against a real estate developer, two of his sons, and their affiliated entities. Following the entry of judgment, the judgment debtors refused to comply with multiple court orders holding the defendants in contempt and compelling them to respond to a variety of subpoenas. Herrick conducted depositions and other discovery regarding the judgment debtors' ability to pay and, upon doing so, filed an application for an installment payment order under C.P.L.R. § 5226. Following a four-day hearing before a court-appointed referee, the referee found one of the judgment debtors had an imputed annual income of \$370,000 and that two of the other judgment debtors each had imputed annual incomes of \$830,000. On that basis, the referee recommended, and the Supreme Court confirmed, that the judgment debtors are required to pay \$406,000.00 per annum to Herrick's client, in equal installments of \$33,833 per month, until the amounts due on the judgment have been paid and satisfied in full.

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.

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.

Lender and Special Servicer - \$126 Million Mortgage on Miami's Shore Club Hotel

Represented the lender and mortgage servicer in litigation against a hotel developer filed in Nassau County Supreme Court and in the Appellate Division, Second Department. The underlying dispute involved an action filed by our clients in Florida seeking to foreclose the \$126 million mortgage on the Shore Club Hotel in Miami, and the hotel developer's ultimately unsuccessful attempts to derail that action. Having slipped a purchase option into a hotel tenant's lease, which purported to convey to the tenant a right to purchase the mortgage loan at fair market value, the developer then "purchased" the option from the tenant and sought to enforce that option in the Florida foreclosure action. On the eve of an expected adverse ruling in Florida, the developer brought its claim to Nassau County, where the trial court granted a preliminary injunction, effectively preventing our clients from foreclosing the mortgage. We filed an appeal and obtained a reversal, resulting in the dismissal of the Nassau County action. Leave to appeal was denied by New York's Court of Appeals.

Commercial Real Estate Dispute - Right of First Refusal

Successful representation of the tenant of a Lakewood, NJ commercial property in litigation seeking injunctive relief and specific performance arising out of landlord's wrongful attempt to sell the property to a third party in a breach of the "right of first refusal" clause in the lease

agreement between the parties. Herrick was able to secure an injunction blocking the sale, which cleared the way for our client to purchase the property, which it has done.

Real Estate Investment Firm - Acquisition and Foreclosure of \$60 Million Mortgage Loan

Advised a New Jersey-based investment firm with over 3.3 million square feet of real estate assets under ownership on the acquisition and foreclosure of a \$60 million mortgage loan encumbering an office building located in White Plains, NY. The loan, already in default, was acquired out of a securitized trust. We proceeded to prosecute a pending foreclosure action to judgment, and then represented the client as the successful bidder at the foreclosure sale. Herrick continues to represent the client in connection with various disputes at the property.

Retail Property Owner - Asbestos Remediation Litigation

Represented the owner of a Massachusetts retail property in a declaratory judgment action filed by the property's former owner following our client's demand that the former owner pay the cost of remediating asbestos at the property. As an alternative to lengthy litigation, Herrick was able to engage the plaintiff in mediation which resulted in a very favorable settlement for our client.

Finance Company - Ponzi Scheme Foreclosure

Representation of a finance company in its foreclosure of a commercial property placed in receivership due to the collapse of an alleged Ponzi scheme by the ownership entity.

Verizon Wireless - Appellate Victory in Cell Phone Tower Zoning Dispute

Represented Verizon Wireless in the company's successful appeal of a New Jersey township's denial of a variance allowing for the construction of a 140-foot cell tower. The victory followed a more than seven year effort to obtain approval for the project which aimed to provide service in a "dead zone" affecting the Princeton, NJ area. In a unanimous decision, the New Jersey Superior Court, Appellate Division reversed a lower court's ruling, agreed with our argument that the township's zoning board had acted improperly and ordered the board to reconsider the application.

Breach of Contract, Fraud and Unjust Enrichment Claims against Brazilian Bank

Successfully represented a U.S. specialty food manufacturer and importer in litigation filed in New Jersey federal court asserting breach of contract, fraud and unjust enrichment claims against a Brazilian bank and certain suppliers in connection with the bank's alleged improper drawing on a standby letter of credit arranged by our client to finance the manufacture of food products in Brazil. After obtaining a recommendation from the Magistrate Judge, later confirmed by the district court, denying the bank's motion to dismiss for lack of personal jurisdiction, Herrick secured a favorable settlement that resolved claims against the bank and later obtained a default judgment against the Brazilian supplier entities.

Appellate Victory for Special Servicer

Representation of a special servicer in a suit against a borrower and three individual guarantors after the borrower procured subordinate financing in violation of a non-recourse carve-out provision. Our client was the special servicer for the lender. In a case of first impression, the New Jersey Appellate Division enforced the non-recourse carve-out provision and imputed personal liability to the borrower and guarantors. It concluded that the disputed clause fixes liability rather than damages and, therefore, does not constitute an unenforceable penalty as the borrower had argued. The Appellate Division also held that the borrower's efforts to "cure" the triggering event did not vitiate personal liability. As a result, the lender properly obtained a \$5 million+ deficiency judgment against the borrower and guarantors.

Real Estate Management Company - Tax Protection Dispute

Represented a real estate management company in defending against a multi-million dollar claim that it breached a tax protection agreement with a property owner that contributed an office building to the partnership. The property owner claimed that the tax protection agreement was triggered by the real estate company's merger with another company.

Commercial Bank - Cross-Border Mortgage Dispute

Representation of a commercial bank in connection with a claim by a French entity that it held a commercial mortgage that was senior to our client's \$23 million mortgage on a Manhattan hotel. The trial court entered a \$242 million judgment of foreclosure in favor of the French entity which, if executed, would have extinguished our client's mortgage lien. On appeal, the Appellate Division reversed the trial court's decision and vacated the foreclosure judgment. We subsequently helped resolve the dispute with our client receiving payment in full.

Financial Services Firm - FINRA Arbitration

Representation of a major financial services firm and one of its brokers in an arbitration brought by three customers seeking over \$20 million in damages. Following 16 days of hearings before a FINRA panel, the customers received an award (less amounts awarded on our client's counterclaim) of \$28,430. The panel granted the broker's request for an expungement of the matter from his CRD record.

Real Estate Board of New York - Mitchell-Lama Litigation

Represented the Real Estate board of New York in its successful lawsuit against the New York City Council to overturn Local Law 79. The law required owners of Mitchell-Lama housing and housing subsidized by certain federal programs to give a right of first refusal to purchase their projects to tenants, pursuant to an ambiguous and burdensome process. The Court found that the law was preempted by federal and state housing laws, and enjoined the City from enforcing it.

Hard Money Lender - Guccione Loan Default

Representation of a lender in collecting on a defaulted loan made to former Penthouse publisher Robert Guccione and his companies. Over a five-year period, the lender foreclosed on four properties in New York and New Jersey and realized additional funds from the sale of Guccione's world-class art collection. Ultimately, the client collected over \$35 million on the loan and was substantially paid in full.

Republic of Turkey - Elmali Hoard Restitution

Represented the Republic of Turkey in recovering the "Elmali Hoard" of extremely rare ancient silver coins from a major collector.