



Darlene Fairman

Counsel

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Darlene Fairman's practice includes a wide range of civil litigation with emphasis on complex commercial and real estate litigation in New York's state and federal courts. Darlene has also been an active member of Herrick's Art Law Group since 1994.

Art Law

Beginning with the successful representation of the Republic of Turkey in recovering the "Elmali Hoard" of rare and valuable ancient silver coins, Darlene has represented Turkey in matters seeking the return of looted cultural property. In addition, she has represented the heirs of world-renowned Russian artist Kazimir Malevich in their litigation against the City of Amsterdam to reclaim his artworks. This litigation was successfully settled in 2008 when the City of Amsterdam returned five paintings to them.

Darlene is actively involved in Holocaust looted art matters. She has represented art dealers and galleries in various matters and has successfully represented a jewelry designer in a copyright dispute.

Since its inception in 2009, Darlene has been the editor-in-chief of *Art & Advocacy*, Herrick's art law newsletter.

Complex Commercial and Real Estate Litigation

As a result of Darlene's broad based experience as a real estate litigator, she has had the opportunity to work with nursing home owners and operators, commercial and affordable housing developers, title insurance companies and the Real Estate Board of New York in connection with a variety of thorny issues including zoning and governmental disputes, challenges to local laws, environmental issues and fraudulent transfers. Her complex commercial experience in both State and Federal courts, at both the trial and appellate level, includes a wide variety of matters including breach of contract, business divorce, family and partnership disputes, and economic torts including fraud, breach of fiduciary duty and tortious interference claims. Darlene also has experience with accounting and accountants' malpractice matters.

Darlene's representative matters include:

- Represented purchaser of \$80 million Long Island City mixed-use property in breach of purchase agreement action
- Represented purchaser of \$155 million corporate division in breach of purchase agreement action
- Successful litigation to preserve the lien of a mortgagee whose borrower was revealed to be the knowing recipient of a fraudulent transfer of the mortgaged property
- Represented the owner of a former inactive hazardous waste site in connection with litigation over a seawall built at the site and the sale of the property

- Represented a major affordable housing developer and operator in a dispute with the New York City Housing Authority
- Litigation of a partnership dispute involving the sale of six low income housing developments
- Represented the Real Estate Board of New York in its successful lawsuit against the New York City Council to overturn Local Law 79
- Successfully represented a developer in litigation over its right to convert a building it purchased from office/retail use to mixed office/retail and residential use
- Represented a nursing home owner and operator in numerous business and real estate concerns, both transactional and litigation
- Litigation of trusts and estates matters in Surrogate's court
- Represented former executive in litigation over alleged use of confidential information.

Services

- Art
- Litigation
- Corporate Litigation
- Alternative Dispute Resolution
- Real Estate Litigation & Dispute Resolution

Education

- Georgetown University Law Center (J.D., *cum laude*, 1989)
- Cornell University

Publications

February 2015

Panel Discussion on Issues for Art Collectors and Their Advisors
Art & Advocacy, Volume 19

May 28th, 2014

Protection of Art Experts from a Swiss Perspective
Art Antiquity and Law - Volume XIX, Issue 1 - April 2014

February 4, 2014

The True Cost of Authentication Litigation
Artbanc Intelligence

July 2013

The True Cost of Authentication Litigation
Art & Advocacy, Volume 15

August 2011

New York Board of Regents Adopts New Rules Regarding Deaccessioning of Artworks
Art & Advocacy, Volume 9

January 2010

Arbiters of Authenticity
Art & Advocacy, Volume 5

February 2009

New Bill Regarding Resale Royalties for Artists
Art & Advocacy, Volume 1

February 2009

New Guidelines for the Acquisition of Archaeological Materials of Ancient Art
Art & Advocacy, Volume 1

February 12, 1996

Inherently Distinctive Gains New Clarification
National Law Journal

Matters

Affordable Housing Developer - Resolution of Breach of Contract Claims against NYCHA

Negotiated a favorable settlement on behalf of a national developer of affordable housing, resolving a breach of contract litigation against the New York City Housing Authority related to a high-profile and long-stalled project to redevelop a large New York City public housing complex.

Not For Profit Association - Executive Transition

Represented major sports league in connection with all employment and personnel issues.

Marei von Saher - Restitution of Nazi-Looted Art

Representing Marei von Saher in her efforts to recover hundreds of Nazi-looted artworks from the collection of her father-in-law, the renowned Dutch art collector and dealer, Jacques Goudstikker.

Developer - Successful Defense in Breach of Contract and Fraud Dispute

Herrick successfully defended Muss Development in the Appellate Division, First Department appeal of *Princes Point LLC, et al. v. Muss Development LLC et al.*, a case involving the plaintiff's breach of a \$36 million contract to purchase Princes Point, a 23-acre waterfront parcel of land on the south shore of Staten Island, from Muss. The First Department unanimously confirmed Herrick's earlier Supreme Court, New York County victory for Muss, which entitles the real estate developer to retain the plaintiffs' approximately \$4 million deposit plus other fees totaling nearly \$1 million. In doing so, the court delved into an area where there was a dearth of case law in New York – namely, whether a prospective real estate purchaser anticipatorily breaches a sale contract by commencing an action against the seller for rescission before the closing date, and whether, in that event, the seller is required to show that it was ready, willing, and able to complete the sale. The court held that the plaintiff had anticipatorily breached the contract and that Muss is entitled to keep the deposit and other significant fees without having to show that it was ready, willing and able to close. Once there was a breach, there was no need to spend time and money preparing for a closing that was not going to happen.

New York State Association for Affordable Housing - Challenge to Local Law 44

Representing the New York State Association for Affordable Housing and individual developers in litigation seeking to invalidate Local Law 44 - which requires any developer receiving city funding to submit quarterly wage reports - as unconstitutional, pre-empted by New York state law, and imposing an unreasonable economic burden on small businesses competing for affordable housing work.

Publicly Traded REIT - Credit Default Swap Default

Defense of a publicly traded hospitality REIT against allegations by its counterparty, a large multi-national investment bank, that two of our client's funds defaulted on their obligations under a \$1.2 billion credit default swap.

Heirs of Kazimir Malevich - Amsterdam Settlement

Representing the heirs of the world-renowned Russian artist Kazimir Malevich in their litigation against the City of Amsterdam to reclaim artworks created by their ancestor. This litigation was successfully settled in April 2008 when the City of Amsterdam returned five Malevich paintings to the heirs.

Former CEO - SEC Investigation

The former CEO of a major fiber optic company in an SEC investigation of accounting irregularities. After a grueling deposition and an in-depth Wells Submission, the SEC determined not to pursue any action against our client.

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.

Real Estate Developer - Mixed-Use Conversion Case

Successfully represented a real estate developer in litigation over its right to convert a building it purchased from office/retail use to mixed office/retail and residential use.

9/11 Families and Victims - Compensation Fund Assistance

Pro bono assistance to victims and their families in recovering funds from the 9/11 Victim Compensation Fund.

Henry Newman - Settlement with Metropolitan Museum of Art (Claude Monet)

Represented a collector in the settlement of a dispute over a painting by Claude Monet in the collection of the Metropolitan Museum of Art claimed to have been stolen from a bank vault during the Soviet occupation of Berlin in 1945.

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.

Events

Herrick and The Art Newspaper Present: Fascinating Cases of Forgery and Fakes: Art Authentication Issues

June 25, 2015
Herrick, Feinstein LLP

SFO Wealth Operations & Performance Conference 2015

June 9, 2015
The Princeton Club

Appraiser's Association of America: Legal and Ethical Concerns for Appraisers

October 10, 2013
Herrick, Feinstein LLP

Discussion on Art Authentication Boards, Art Appraisal and International Law

April 24, 2013
New York Law School

Anti-Defamation League Next Generation Philanthropy Community Event: Recovering Art Looted by the Nazis during the Holocaust

November 29, 2012
Herrick, Feinstein LLP

Annual Art Litigation and Dispute Resolution Practice Institute

November 16, 2012
New York County Lawyers' Association

Rutgers Law Record: "Unspoken Trade: Stolen Art in America"

November 14, 2012
Rutgers School of Law-Newark

Penn Law Alumni Weekend: Local and Global Art Conflicts Seminar

May 12, 2012

Art Law Association Program: Cultural Heritage and Looting

November 17, 2011
Brooklyn Law School

Herrick Art Law Seminar: New Dimensions in Art Recovery

November 16, 2011
Herrick, Feinstein LLP

A Snapshot of Cultural Heritage Property Law

July 28, 2011
Sotheby's Institute

Restitution of Holocaust Looted Art Panel

November 3, 2010
Brooklyn Law School

News

August 13, 2018

Marei von Saher Files Petition Asking Appellate Court to Reconsider its Dismissal of Her Claim to Recover Iconic Nazi-Looted Paintings from California's Norton Simon Museum of Art
Herrick, Feinstein LLP

January 20, 2015

U.S. Supreme Court Rules in Favor of Herrick Client Marei von Saher
The Art Newspaper, Associated Press and the Pasadena Star-News

June 6, 2014

California Federal Court of Appeals Revives Nazi-Looted Art Claim Against Norton Simon Museum
Herrick, Feinstein LLP

April 11, 2012

Brooklyn Law School Art Law Association Presents Dean Jones-Woodin Award to Darlene Fairman
Brooklyn Law School Art Law Association