



## Janice Goldberg

*Partner*

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Janice Goldberg is a seasoned litigator whose practice includes a wide range of civil litigation with an emphasis on complex commercial and real estate litigation in New York's state and federal courts and before nationally recognized arbitral bodies including JAMS.

Janice represents commercial litigation clients on matters involving breach of contract, business divorce, family and partnership disputes, shareholder derivative claims, and economic torts including fraud, breach of fiduciary duty and tortious interference claims.

Janice's real estate litigation experience includes matters involving commercial lease disputes, corporate governance of condominiums and cooperatives, and representation of not-for-profit and religious corporations selling and mortgaging real property in compliance with New York law.

Prior to joining Herrick, Janice was an associate at Fried, Frank, Harris, Shriver & Jacobson LLP.

### Services

- Litigation
- Corporate Litigation
- Business Divorce & Partnership Disputes
- Real Estate Litigation & Dispute Resolution
- Distressed Real Estate
- E-Discovery and Data Management

### Education

- Rutgers School of Law (J.D., *with high honors*)
  - Order of the Coif
  - Articles Editor, Rutgers University Law Review
- Tulane University (B.A., *summa cum laude*)

### Memberships & Associations

- American Bar Association

### Matters

#### Financial Services Advisory Firm – Motion to Dismiss Granted in Complex Business Dispute

Herrick successfully represented a financial services advisory in a complex business dispute, including breach of contract, shareholder and conversion claims, where the New York County Supreme Court granted our clients' motion to dismiss the conversion claims and awarded our

client costs and attorneys' fees. The remaining claims are subject to a pending summary judgment motion.

#### Apparel Company – Motion to Dismiss Granted in Precedent Setting Merger Dispute

Represented a leading apparel company and its majority shareholders in a cash out merger dispute with its former minority shareholder. The minority shareholder filed an action in New York State Supreme Court to rescind the merger, alleging that the apparel company failed to comply with New York case law mandating a legitimate business or corporate purpose for corporate mergers. The Court initially denied the apparel company's motion to dismiss but granted reargument, recognizing that its original decision did not fully address the business purpose arguments that lay at the core of the dispute. Following reargument, the Court granted the apparel company's motion to dismiss, acknowledging the merger's clear legitimate business purpose. This decision holds great significance for the legal community as there are very few precedents under New York law addressing the conditions under which a merger can be rescinded, particularly for lack of a legitimate business purpose. The case is *Alan Ades v. Van Dale Industries, Inc. et al.* (N.Y. Sup. Ct.).

#### Wythe Berry Fee Owner LLC – Debtor in Chapter 11

Represented debtor in chapter 11 proceeding involving the William Vale Hotel, a luxury hotel in Brooklyn. Hotel sold for \$177 million pursuant to plan of reorganization. *654 B.R. 524 (Bankr. S.D.N.Y. 2024)* and *660 B.R. 534 (Bankr. S.D.N.Y. 2024)*.

#### All Year Holdings Limited - Special Litigation Counsel

Represented real estate debtor as special litigation counsel. Won motion to dismiss adversary proceeding, which was affirmed on appeal. *684 B.R. 734 (S.D.N.Y. 2022)*

#### New Yorker Hotel - Mortgage Loan

Represented the not-for-profit owner of the New Yorker Hotel in connection with a mortgage loan, including seeking Court and New York State Attorney General approval of same.

#### Real Estate Investment Company - Litigation Arising from Failed Joint Venture

Representing a real estate investor and developer in litigation arising from a failed joint venture to acquire, own and operate a 50 percent tenant-in-common interest in fourteen valuable midtown Manhattan commercial properties. Dispute includes claims that our client's former partner breached a contribution agreement between the parties by selling the rights and interest in the acquisition to a third-party for its own benefit, misappropriating funds intended for joint venture purposes, and misappropriating a \$46 million payment that it was not entitled to under the terms of the agreement.

#### Appellate Court Victory Barring Arbitrator from Modifying Original Award

Herrick secured an important victory before the Appellate Division, Second Department, obtaining a ruling affirming the trial court's decision to overturn a Bet Din arbitration in which the arbitrator issued an additional award against our client after having already rendered a final award. The plaintiff had argued that the arbitrator's first award of \$425,000 was only an interim judgment and that the agreement vested the arbitrator with continuing authority to issue another award against our client, two years later and involving the same general subject matter, for an additional \$3.75 million. Although courts rarely overturn arbitration awards, the appellate court agreed that the arbitrator lacked the authority to expand the previous award and affirmed the decision on the grounds that the arbitrator was "*Functus Officio*."

#### Ireland-based Company - Dismissal for Lack of Jurisdiction

Successful defense of an Ireland-based entity in litigation asserting fraud and breach of warranty claims arising from alleged misstatements and omissions of material facts made in the shareholder's agreement of a venture formed to lay an undersea telecommunications cable between Ireland and Wales. Secured the client's dismissal from the action based on lack of personal jurisdiction.

### Manufacturer - All Claims Dismissed in JAMS Arbitration Initiated by Former CEO

Achieved total victory for a promotional products manufacturer and distributor, defeating all claims asserted in an arbitration for breach of employment and shareholders agreements, breach of fiduciary duty, and shareholder oppression initiated by the company's former CEO and former majority shareholder. The panel found that the claimant had indeed been properly terminated, referencing numerous instances in which the claimant charged the client for non-business related expenses or used company resources to conduct side businesses for the sole benefit of the claimant's friends and relatives. Finding the remaining claims meritless, the panel ultimately found our client, as the prevailing party, entitled to recover the full costs of the arbitration, including legal fees.

### Former Owners of Acquired Business - Litigation to Recoup Monies Held in Escrow

Representing the former owners of a designer and distributor of mechanical and chemical fastening products acquired by a Fortune 500 manufacturer of industrial tools and household hardware in litigation to recoup monies held in an escrow account as indemnification payments for post-closing risks. Dispute involves issues related to import tariff and customs duties imposed by Canadian authorities on products imported by the acquired business from the Republic of China.

### DataTreasury - Appellate Court Upholds Dismissal of Complaint Seeking \$15 Billion in Damages

Secured a victory for DataTreasury and its officers before the Appellate Division, Second Department, obtaining a ruling affirming the trial court's dismissal of a complaint seeking \$15 billion in damages filed by a purported joint venture partner claiming fraud and the alleged breach of an oral joint venture involving a patent for check imaging technology. In affirming the dismissal, the appellate court held that the breach of contract claim was time barred, and that the fraud claims lacked the requisite specificity and were duplicative of the breach of contract claims.

### Non-Profit Organization - Litigation against Former Board Members

Achieved an important victory on behalf of a non-profit pro-bono client asserting claims against several former board members who had used their positions of trust to loot the organization for their own personal gain by misappropriating funds from the client's operating accounts, gaining control of the organization's Harlem apartment buildings, misappropriating rental income from those properties, and ultimately selling one of the buildings for their own benefit. Herrick successfully argued a motion for a preliminary injunction, obtaining an order from the court enjoining the defendants from holding themselves out as officers of the non-profit, and requiring them to return the organization's apartment buildings to our client's control.

### Trust Administrator - Breach of Contract

Negotiated favorable settlement on behalf of a provider of specialized administrative and corporate governance services to resolve claims of breach of contract, gross negligence and fraud related to administration of trust in connection with a portfolio of student loan backed notes.

### Dismissal of Hurricane Sandy Class Affirmed on Appeal

Successfully defended three owners of sizable residential portfolios and five managing agents of rental properties located in downtown Manhattan in a putative bi-lateral class action brought by three plaintiffs seeking statutory rent reimbursement for loss of services during Hurricane Sandy. Herrick obtained dismissal of the complaint on a pre-class certification motion for summary judgment made prior to any discovery, asserting that the class claims as pled failed to satisfy the statutory requisites of a class action. On plaintiffs' appeal, the Appellate Division, First Department unanimously affirmed.

### Property Owners - Real Estate Brokerage Dispute

Represented property owners in litigation and negotiated settlement arising from a real estate broker's alleged breach of fiduciary duty while acting on our clients' behalf to broker four properties located in New York City's East Village and Lower East Side.

#### Real Estate Investor - Successful Prosecution of Breach of Contract of Sale Agreement

Achieved a significant victory on behalf of a major New York City real estate investor in a breach of contract dispute with the would-be-buyer of five of our client's multiple-dwelling residential properties, who breached a contract of sale between the parties by failing to fully pay the agreed upon down payment as required in the agreement. The court granted our motion for partial summary judgment, striking the defendant's affirmative defenses, denying the defendant's cross motion for leave to amend its answer to interpose counterclaims, and ordering the defendant to pay \$850,000 in damages, plus interest, to our client.

## Publications

September 9, 2024

Hotel Creditors Recoup 100%  
Turnarounds & Workouts

August 3, 2021

Recent Court Decision Demonstrates There is Possible Relief for Commercial Landlords,  
Despite Extended Moratorium