



## Michelle M. Sekowski

*Counsel*

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Michelle Sekowski is counsel in Herrick's Litigation Department, where she concentrates her practice on complex commercial and general litigation. At Herrick, Michelle has litigated a broad range of matters in federal and state courts, including contract, intellectual property, commercial real estate, product liability, consumer fraud, employment, and estate disputes.

Prior to joining Herrick, Michelle was an associate at Boies, Schiller & Flexner LLP, where she focused on complex commercial litigation and served on the trial team that successfully defended a prominent investment bank in a \$13 billion matter arising out of the most recent global economic crisis. She began her career at Greenbaum, Rowe, Smith & Davis LLP, where she was a member of the Litigation Department and the Employment Law Practice Group.

Michelle received her J.D., with honors, from Emory University School of Law. During law school, she was elected to the Order of the Coif, was a Notes and Comments Editor of the Emory International Law Review, and served as a judicial intern to the Honorable P. Harris Hines of the Supreme Court of Georgia. Michelle received her undergraduate degree, cum laude, from the University of Richmond.

Michelle serves on the Board of Directors of the New Jersey Women Lawyers Association, as a Barrister in the John C. Lifland American Inn of Court, and as a member of the Alumni Recruitment Committee for the University of Richmond. Michelle was recently appointed by the New Jersey Supreme Court to its Advisory Committee on Outside Activities of Judiciary Employees. In her spare time, Michelle is an active volunteer for the Cystic Fibrosis Foundation, Greater New Jersey Chapter, which in 2014 honored her as one of New Jersey's "Finest Young Professionals." She also teaches Electronic Discovery as an Adjunct Professor at Rutgers Law School in Newark, New Jersey.

### Services

- Litigation
- Corporate Litigation
- Real Estate Litigation & Dispute Resolution
- Construction and Development
- E-Discovery and Data Management
- Restructuring & Finance Litigation
- Business Divorce & Partnership Disputes

### Education

- Emory University School of Law (J.D., *with honors*, 2003)
  - Order of the Coif
- University of Richmond (*cum laude*, 2000)

### Memberships & Associations

- Barrister, John C. Lifland Inn of Court
- Director, New Jersey Women Lawyers Association
- Junior League of Monmouth County
- Herrick's Diversity Committee

### Matters

#### Condominium Developer - Dispute with Borough of Jamesburg Favorably Resolved

Successfully represented the developer of 42 newly completed residential condominium units located in Monroe Township, New Jersey 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.

#### National Cleaning Solutions Company - Trade Secret Misappropriation and Breach of Restrictive Covenant Claims

Successfully resolved a dispute on behalf of a national cleaning solutions company in connection with trade secret misappropriation and breach of restrictive covenant claims.

#### New Jersey-based Nursing Home Facility - Leasing Dispute

Represented the defendants in a dispute where the parties had contracted for a long-term lease of a nursing home facility, representing several million dollars of rent. After our clients ultimately decided not to move forward with the lease, they negotiated a settlement that included a general release with the owner of the facility. Notwithstanding that, the facility owner subsequently filed suit in the Superior Court of New Jersey for eight separate causes of action, including breach of contract, tortious interference, and fraud in the inducement. In its complaint, the plaintiff also argued that the release was unenforceable because it was procured by economic duress. Herrick filed a motion to dismiss, arguing that the plaintiff did not plead the existence of economic duress at the level necessary to set aside the release. The court agreed with Herrick, dismissed the complaint without prejudice, and ordered that any refiled complaint contain specific facts with respect to the exact nature and extent of the economic duress at the time the release was given. This was a major victory in that there are very few New Jersey cases where a release has been enforced on a motion dismiss in the face of a claim of economic duress.

#### New Jersey-based Food Manufacturer - Leasing Dispute

Representing a New Jersey-based food manufacturer in an action brought against its landlord on a commercial lease for its warehouse at in Franklin Township, New Jersey. Our client seeks damages caused by breaches of various provisions in the lease related to the preparation of the previously-vacant building for occupancy and the build out of office space in the warehouse. The landlord filed a counterclaim asserting that our client breached the lease by applying a purportedly defective coating on the warehouse floor, and also seeking attorney's fees and unspecified indemnification costs. This matter is ongoing.

#### Leading Special Servicers of CMBS Debt - New Jersey Real Estate Dispute

Representing four (4) leading special servicers of CMBS debt in connection with 18 defaulted loans secured by multi-family apartment buildings located throughout New Jersey. When the principal of the borrowers abandoned the properties, Herrick applied in federal court for appointment of a receiver to manage the properties. That application was successful, and a receiver was appointed. Once the receiver was in place, Herrick then commenced foreclosure

actions in state court with respect to all of the 18 loans. Judgments have been obtained in all of the foreclosure actions and over the last year, the Herrick team has utilized a number of creative strategies to pursue the clients' interests, including facilitating the sales of a number of the properties through the receivership (with the clients receiving the proceeds of such sales), and pursuing title to the balance of the properties through foreclosure sales. This matter is ongoing.

#### Restaurant Owner - Disputed Purchase Agreement

Representation of a property and business owner in an action arising out of the sale of a restaurant. The purchaser was unable to afford the full purchase price and entered into an agreement whereby monthly rental payments would go towards paying the purchase price. The purchaser was unable to make the monthly rental payments. In accordance with the terms of the agreement, the seller reclaimed ownership. The purchaser filed a lawsuit alleging various claims based in tort. Those claims are currently being litigated.

#### Toys R Us

Represented a fund in connection with a dispute over treatment of claims in a Chapter 11 plan of reorganization of subsidiary debtors.

#### Sears - Special Counsel to Creditors Committee

Serving as (i) Special Counsel to the Official Committee of Unsecured Creditors charged with investigating potential estate claims and causes of action relating to a 363 sale of intercompany company notes and certain credit default swap transactions, and (ii) Special Counsel to the Official Committee of Unsecured Creditors in high profile litigation on behalf of debtors' estates, seeking to recover billions of dollars of claims arising from several prepetition transfers. (*In re Sears Holdings Corporation, et al. (S.D.N.Y.)*)

#### Commercial Bank - All Claims Dismissed in Litigation over Failed Loan

Negotiated a settlement on behalf of a commercial bank resulting in the voluntary dismissal of all claims filed in a New Jersey state court by an asset manager seeking to hold the bank responsible for losses on a failed loan made to a furniture business prior to the business' bankruptcy filing. Claiming that it had been induced into extending the loan based, in part, on a multi-million revolving credit line extended to the business by our client, the plaintiff argued that the credit line and our client's alleged failure to adequately monitor the business gave the plaintiff the impression that the business was in better financial shape than it was. Following Herrick's filing of a third-party complaint, repeated motions to dismiss and an aggressive discovery, the plaintiff dismissed its claims against our client without any payment or admission of wrongdoing while negotiating settlements from the remaining defendants.

#### 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 took title to all seven properties. In the course of prosecuting these actions, we obtained an important decision

from the Superior Court of New Jersey, Appellate Division, enforcing our client's standard pre-negotiation agreement – an agreement routinely obtained by lenders to avoid potential lender liability claims.

#### **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**

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.

#### **Business Dispute - Proposed Solar Farm Joint Venture**

Successfully defended a New Jersey-based real estate company in litigation filed in New York state court by a potential joint venture partner in the development of New Jersey solar farm installations. When the venture never materialized, the plaintiff filed suit asserting breach of contract and tort claims, and seeking over \$10 million in damages. Herrick obtained a dismissal of all claims against the client in the trial court, and won affirmation of the dismissal from the Appellate Division, First Department.

#### **Trade Secrets**

Represented international food company in contract and trade secrets dispute filed in federal court in New Jersey.

## News

May 24, 2013

Herrick Lawyers, Practices Recognized by Chambers USA 2013  
*Chambers USA*

April 2, 2013

New Jersey Law Journal Names Herrick Finalist for Commercial Litigation Department of the Year  
*New Jersey Law Journal*

## Publications

November 18, 2020

Herrick's Restructuring & Finance Litigation: 2019-2020 In Review