

Real Estate Litigation

Cozen O'Connor's real estate attorneys act as counsel to developers, owners, real estate investment trusts, investors, retail and office tenants, real estate brokers and managers, banks and other lending institutions, title insurance companies, architects, and building contractors. Our team handles all types of real estate litigation involving failed loan workouts, landlord-tenant disputes, commercial evictions, rent resets, valuations, mortgage foreclosures, partnership and joint venture disputes, real estate tax appeals, condemnations, land use and zoning, and ownership disputes. We have a lengthy track record of success at trial, as well as in alternative dispute resolution forums such as arbitration, mediation, and administrative proceedings.

Real estate litigation is a specialized legal practice that demands a comprehensive understanding of both business and litigation. As a well-known business litigation firm, Cozen O'Connor is ideally suited to operate effectively at this intersection of corporate interests and dispute resolution. Our real estate attorneys are involved in some of the most complex transactions in the nation, which means that we are fully versed in the most current deal structures. That familiarity is an enormous benefit on the litigation side because it enables us to identify substantive issues and assess the relative merit of various positions.

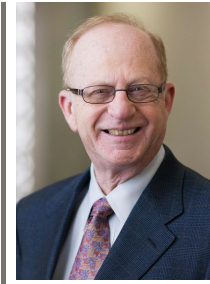
In addition to the requisite real estate background, our attorneys also have excellent trial skills. Members of the real estate litigation team have been handling major cases for decades, and can claim a successful track record before trial judges, juries, and appellate courts alike. This experience not only enables us to steer clients more quickly through the crucible of court, it also supports our ability to negotiate beneficial settlement agreements. Adversaries know that we settle to serve clients' interests, not to avoid trial, which eliminates needless brinkmanship and strengthens our bargaining position.

SERVICE AREAS

- Handle landlord-tenant disputes
- Litigate commercial evictions, mortgage foreclosures, eminent domain claims, and condemnations
- Lead rent reset proceedings and valuation proceedings
- Resolve disputes among investor groups, joint venturers, and partners
- Counsel clients on real estate tax reassessment appeals
- Lead real estate finance and insolvency litigation
- Handle ownership, easement, and boundary disputes
- Review breach of lease options, right-of-first-refusal agreements, and buy-sell agreement claims
- Conduct land use and zoning appeals

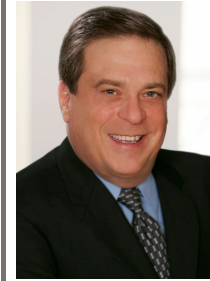
Experience

Secured a favorable decision for the client seller from the California Court of Appeal in a years-long dispute arising from the failed purchase and sale of a retail shopping center in Los Angeles. The prospective purchaser's failure to follow through with the purchase caused our client to sustain, among other harm, consequential damages including lost rental income and triple net expenses. The parties pursued competing claims for breach of contract and fraud after the purchaser refused to authorize the release of the earnest money deposit. At the conclusion of the arbitration hearing, our client was granted its consequential damages, attorneys' fees, and the earnest money deposit that remained in escrow. In seeking to confirm the arbitration award in California State Court, the trial judge vacated our client's recovery of consequential damages but entered judgment in our client's



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Related Practice Areas

- Condominiums & Cooperatives
- Distressed Real Estate
- Real Estate
- Real Estate Finance
- Zoning, Land Use & Development

Industry Sectors

- Real Estate & Construction

favor with respect to the recovery of attorneys' fees. On appeal and after extensive briefing, the Court of Appeal reinstated the arbitrator's award of full consequential damages and affirmed the entire amount of the trial court's judgment of attorneys' fees in our client's favor.

Obtained a favorable ruling in Supreme Court, New York County, on behalf of Mario Batali and Lidia Bastianich in a suit brought by a neighboring property owner who alleged that the air conditioning units and kitchen exhaust pipe at the clients' restaurant, Babbo, were in violation of New York City's building code, and that newly installed air conditioning units were too noisy and caused vibrations. Our team obtained evidence that played a significant role in the Court's decision by personally climbing to the top of the building to photograph the allegedly offending machinery.

Won an appeal on behalf of the landlord in a dispute involving a café-operator tenant's failure to pay rent in which the key issue before the court was whether the corporate veil could be pierced. On appeal, we obtained reversal of the lower court's dismissal of the piercing corporate veil claim and obtained dismissal of almost all of the defendant's affirmative defenses.

Won a writ of mandate against a city, striking the city's decision that our client must pay more than \$5 million in relocation costs to close its mobile home park for redevelopment. The court held instead that the city was the responsible party because it had failed to renew the park's zoning variance.

Won a \$3.2 million judgment for a D.C. metro-area property management and real estate services company in a hotly contested commercial eviction action in the wake of the COVID-19 pandemic.

Achieved a complete victory for the landlord after a multi-day arbitration before AAA against a large, international health and fitness company centering on rent withheld during the pandemic. In a 23-page award, the arbitrator found that the doctrines of frustration of purpose, impossibility, impracticability, and force majeure were inapplicable and awarded the landlord full relief, including attorneys' fees.

Won summary judgment on behalf of a landlord in litigation against a restaurant tenant (and its guarantor) who stopped paying rent and abandoned the premises due to business decline following COVID-19 and government-mandated closures. In granting summary judgment, the court rejected the tenant's common law defenses of impracticability, frustration of purpose, and illegality as against public policy. Because summary judgment was granted against both the tenant and the guarantor, the client was able to apply for an award of all attorneys' fees.

Resolved a long-standing and hard fought construction defect case on behalf of the boards of three condominiums, securing an agreement from the developer-defendants to perform approximately \$12 million of bonded remedial work, plus a cash settlement to cover the clients' expenses. This case was particularly challenging because the buildings in question sustained flooding during Hurricane Sandy, giving the defendants an argument that the defects at issue were caused by the storm.

Obtained a decision from the Pennsylvania Supreme Court affirming the unanimous decision from the Commonwealth Court of Pennsylvania, affirming decisions of the Court of Common Pleas and the Cheltenham Township Zoning Hearing Board in favor of our real estate developer client, in a case of first impression. The matter centered on a dispute over whether the filing of a mandatory sketch plan creates a vested right for consideration of the plan, as well as any future zoning applications related thereto, under the zoning ordinance in effect when the sketch plan was filed. We convinced the courts that the initial filing does create such a right, and that the township's challenge to the authority of the zoning hearing board to render the initial favorable decision for our client was without merit. The Commonwealth Court's decision, which was affirmed by the Supreme Court of Pennsylvania, permits the client to move forward with a land development plan for the contemplated

five-building apartment project, featuring 216 units and a community building.

Obtained dismissal of officers of real estate company in an action asserted against them for negligent misrepresentation in connection with the failed development of the Chicago Athletic Association Building.

Represented the owner of the commercial portion of a large high-rise located in Chicago's Gold Coast in a multimillion dispute with the home owner association regarding the allocation of shared utilities under the condominium declaration.

Obtained dismissal of all claims asserted against a developer of a large residential downtown Chicago development and successfully defended the dismissal on appeal.

Successfully defended high-profile temporary restraining order companion cases filed by a public interest group against our client relating to a public-private construction project on public property, obtaining dismissal for our client and reimbursement of attorneys' fees.

Successfully tried a federal court case that resulted in a verdict in favor of our client, an international commercial real estate owner and landlord, against the claims of one of its major tenants in a prominent downtown Chicago commercial space, regarding allocation of millions of dollars of expenses relating to the tenant's lease and use of the property.

Successfully defended to jury verdict against a claim by a former head of the firm's real estate department's claim that he is entitled to an equity interest in the firm valued at \$30 million. (Case on appeal to the Second Circuit Court of Appeals.) (Stevens v. Landmark Partners, Inc., 2009 W.L. 3151327)

Successfully defended a real estate developer against a claim by a partner in the real estate partnership that he was entitled to 20% interest in the partnership as opposed to the .5% interest recognized by the partnership. (Case on appeal to the Superior Court.)

Recently advised a real estate developer that the cloud on their title is covered by title insurance and persuaded the title insurance company to defend the title.

Successfully litigated a title insurance issue on behalf of a developer. (Terra Equities v. First American Title Co.)

Successfully defended a shopping center developer against a claim that its planned addition to the center violated the lease of a tenant in the center.

Representing a real estate developer against claims by a partner in the project that the developer diverted project funds to other uses.

Representing a developer against claims of a plaintiff claiming to be a partner in the project.

Represented clients in mortgage foreclosure matters.

Represented clients in confession of judgment matters involving real estate matters.

Advising clients with respect to environmental disclosure laws.

Successfully represented a lender against charges that it had breached the lending agreement by refusing to continue to fund.

Successfully represented an owner of a low-income housing development that changes made by

Congress to the program constituted a material breach of contract.

Successfully defended a general partner of a real estate partnership against claims of breach of fiduciary duty by a limited partner.

Successfully defended a real estate developer against claims of tortious interference with contractual relations involving a lessee's right to purchase a restaurant on the site to be developed.

Represented national real estate development company in litigation against co-developer and Ford Motor Company, in federal court action alleging contamination of property by co-developer and Ford. Successfully settled matter for seven-figure sum.

Represented national real estate developer in negotiations with tenants of multimillion dollar commercial property in Attleboro, Massachusetts.

Successfully defended national real estate developer in multimillion dollar breach of contract action brought by co-developer, seeking to compel specific performance of a Purchase Option Agreement.

Prevailed in bench trial in Orphans' Court, Philadelphia County, on claims by client's brother seeking 50% ownership of \$20 million commercial real estate portfolio consisting of properties located in Philadelphia, PA, and New York, NY.

Successfully prosecuted action on behalf of real estate investor in state court, against developer and developer's counsel, which action alleged fraudulent preparation and recording of a corrective deed.

Successfully prosecuted action on behalf of commercial real estate firm against publicly-held company for tortious interference with contractual relations.

Represented Special Servicer of Trustee of mortgage-backed securities, in federal court action to foreclose on portfolio of properties.

In matter arising out of bankruptcy of national retailer, represented Special Server of Trustee of mortgage-backed securities, in multi-county state court actions to foreclose on commercial properties and appoint a Receiver to manage properties.

Represented lenders in mortgage foreclosure actions and/or actions on promissory notes and defended borrowers against mortgage foreclosure actions and/or actions under promissory notes.

Represented commercial landlords in lease disputes with tenants, and represented commercial tenants in lease disputes with landlords and subtenants.

Represented purchaser of commercial property in a claim against a surveyor for alleged survey errors resulting in overpayment for the property.

Regularly advised clients which are considering purchases of loans and/or mortgages on issues and potential courses of action with respect to loan defaults to assist in evaluating the proposed transactions and in structuring the transactions if the clients decide to proceed.

Represent partners/shareholders/members of entities owning commercial real estate in disputes with their fellow partners/shareholders/members.

Defended seller of substantial residential property against claims of misrepresentation and nondisclosure with respect to condition of the property.

Representation of a commercial real estate developer in connection with the assertion of a claim

under a title insurance policy adverse to a title insurance company.

Representation of a coal and gas producer in Pennsylvania whose lease is being challenged on the ground that the land owner was barred from entering into an oil and gas lease by the terms of a restrictive covenant running with the land.

Successfully represented a tenant in a commercial lease dispute with the landlord concerning the amount of rent payable under the lease.

Represented a real estate developer involving a lease interpretation dispute over apportionment of common area charges and taxes.

For Philadelphia's Center City District, handled a class action challenging the manner in which it assessed and collected amounts due from property owners in the Center City District. The matter was settled.

Represented a national homebuilder in a wide-variety of commercial and construction litigation matters as both plaintiff and defendant.

Successfully litigated cases where corporate client was accused of violating various sections of fire and property maintenance codes.

Handled claims among construction participants as well as construction design defect litigation.

Represented Upper Uwchlan Township, Pa., in the Route 100 bypass road project about two miles from the Route 100 exit of the Pennsylvania Turnpike. This project also included the acquisition of rights-of-way via negotiated agreements and/or condemnations.

Represented Towamencin Township in the Forty Foot Road and Sumneytown Pike Road improvement projects. The projects included the acquisition of rights-of-way via negotiated agreements and/or condemnations.

Represented a regional drugstore chain in all of its real estate-related matters, which representation has included the acquisition of a 30-store chain.

Won a motion for summary judgment in the United States District Court for the Eastern District of New York on behalf of our client, the Republic of Senegal. The plaintiff was a broker, who claimed a commission for the \$24.5 million purchase of the site of the future embassy and mission on East 44th Street near the United Nations.

Represented tenants in lease disputes in commercial leases.

Represented a mezzanine lender in dispute with the borrower concerning lender's exit fee.

Represented landlords and tenants in commercial and industrial lease disputes.

Handled real estate broker commission disputes.
