



# Menachem J. Kastner

## Member

## New York

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Menachem's practice involves all aspects of real estate litigation and is particularly centered in the area of commercial and residential leasing and ownership and valuation disputes. He has litigated through all of the courts, the interpretation of escalation clauses, assignment and sublet provisions, alteration provisions, use clauses, renewal or purchase options, termination rights, buy-out disputes, and other significant lease interpretation issues.

Menachem is a frequent contributor to legal publications, specifically the *New York Law Journal* and *New York State Bar Association Journal*. Many of his articles have been cited to and relied on by the New York courts. See *London Terrace Towers, Inc. v. Davis*, 6 Misc. 3d 600, 790 N.Y.S. 2d 813 (Civ. Ct. N.Y. Co. 2004); *13315 Owners Corp. v. Kennedy*, 4 Misc.3d 931, 782 N.Y.S. 2d 554 (Civ. Ct. N.Y. Co. 2004); *Concourse Village Inc. v. Bilotti*, 133 Misc. 2d 973, 509 N.Y.S. 2d 274 (Civ. Ct. Bronx Co. 1986).

Menachem has lectured widely on real estate issues, including landlord/tenant and co-op litigation, the law of co-ops/condominiums, equitable distribution, and matrimonial tax. Most recently, Menachem lectured on "Real Estate Transactions - Spotting Litigation Issues" at the PLI Annual Real Estate Institute in 2016 and 2017.

In addition, Menachem is an official court arbitrator for the Civil Court of the City of New York, presiding over trials and inquests, issuing final non-appealable judgments, mediating the settlement of claims, and drafting and ordering stipulations of settlement.

Menachem earned his Bachelor of Arts, *cum laude*, from Brooklyn College of the City University of New York in 1973 and his law degree, *summa cum laude*, from New York Law School in 1976, where he was the recipient of the Trustees' Award for Highest Scholastic Achievement. He was named a New York Super Lawyer (real estate) in 2006, 2010 and 2013-2023 by *Law & Politics*. He was also named one of "New York Area's Top Rated Lawyers of 2013" in Real Estate & Landlord/Tenant by Legal Leaders™. Menachem is admitted to practice in the state of New York.

## Experience

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.

Secured reversal of an order under which a New York City rent-controlled apartment had been subjected to luxury deregulation after expiration of J-51 benefits. In granting reversal, the court, in a case of first impression, distinguished between rent-stabilized apartments and rent-controlled apartments based on the difference in statutory language and concluded that, while a rent-stabilized apartment can be again subject to luxury deregulation upon expiration of the J-51 benefits, a rent-controlled apartment would not be subject to luxury deregulation upon expiration of J-51 benefits. See

## Practice Areas

- Commercial Litigation
- Condominiums & Cooperatives
- Distressed Real Estate
- Real Estate

## Industry Sectors

- Retail

## Education

- New York Law School, J.D., *summa cum laude*, 1976
- Brooklyn College, B.A., *cum laude*, 1973

## Bar Admissions

- New York

## Court Admissions

- U.S. District Court -- Eastern District of New York
- U.S. District Court -- Southern District of New York
- U.S. Supreme Court

## Affiliations

- New York State Bar Association

## Awards & Honors

- New York Super Lawyer, 2015-2018, 2020-2024
- "Super Lawyer" in Real Estate, *Law & Politics* 2006, 2010, 2013-23
- "New York Area's Top Rated Lawyers of 2013" in Real Estate & Landlord/Tenant, *Legal Leaders™*

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*Matter of RAM I LLC. v. New York State Department of Housing and Community Renewal*, 123 A.D.3d 102 (1st Dept. 2014).

Won summary judgment, in a commercial summary holdover proceeding, for a landlord that terminated a tenant's lease for failure to pay rent after having served the tenant with a notice of default providing an opportunity to cure. In granting summary judgment to the landlord, the court rejected the tenant's argument that the notice was deficient. *BP 510 Madison LLC v Prosirir Capital Mgt. LLC*, 2019 NY Slip Op 51782(U) (Civ. Ct. N.Y. Co., October 28, 2019).

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, Menachem 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. *BP 399 Park Avenue LLC v. PRET 399 Park, Inc., et al.*, 150 A.D.3d 507 (1st Dept. 2017).

Secured an appellate victory for a cooperative corporation and members of its board in a suit, spanning two decades, filed by a famous fashion designer who sought to perform substantial alterations to his penthouses to create an enormous residence atop the building owned by the corporation. The unanimous Appellate Division not only dismissed the entire complaint against all but two of the individual defendants, but also dismissed various claims against the corporation at the pleading stage — including violation of the business corporations law, breach of fiduciary duty, fraudulent misrepresentation, and negligent misrepresentation — for which the plaintiff sought damages in excess of \$50 million on each of four of the causes of action. *Tahari v 860 Fifth Ave. Corp.*, 214 A.D.3d 491 (1st Dept. 2023).

Secured a unanimous appellate victory in New York state court, allowing a case brought under New York's Debtor & Creditor Law and common law to move forward after six years of litigation. In its ruling, the Appellate Division reversed the trial court's denial of our client's motion for summary judgment on various statutory causes of action asserted in the complaint and its grant of the defendants' cross-motion seeking dismissal of the entire complaint. Further, the Appellate Division granted our client's motion for summary judgment as to liability for certain interest payments and a related-party security interest, and denied defendants' cross-motion, thereby reinstating not only the complaint but also the client's cause of action for legal fees under the Debtor & Creditor Law.

Won a complete victory on behalf of the landlord in a closely watched commercial landlord-tenant dispute before the New York Appellate Division (First Department). At the outset of the COVID-19 pandemic, The Gap (the international clothing store) stopped paying rent for many of its retail stores, including the premier space in the building owned by our client in lower Manhattan. The Gap preemptively sued for a declaration that the lease had terminated because of the pandemic, citing the doctrines of "frustration of purpose" and "impossibility of performance," among other arguments. The trial court partially granted our motion to dismiss, but left the "frustration" and "impossibility" claims and defenses in the case. On appeal, after oral argument by Menachem, the Cozen O'Connor team secured dismissal of all of The Gap's remaining claims, and the company was ordered to pay both back rent and future rent. The case was the first time the appellate courts in New York had directly addressed the ubiquitous "frustration" and "impossibility" defenses relating to the pandemic. *Gap, Inc. v 170 Broadway Retail Owner, LLC*, 195 A.D.3d 575 (1st Dept 2021).

Secured an appellate victory on behalf of one of the largest landlords in the New York area, which sued a shell company that abandoned space it had leased in one of the client's buildings, also naming as a defendant the tenant's parent company on theories of alter ego and piercing the corporate veil. We appealed the trial court's decision which granted the defendants' motion for summary judgment and dismissed the complaint. We argued on appeal that the shell and the parent were jointly and severally

liable to our client for all obligations under the lease through its expiration date, which totaled more than \$1 million, as well as attorneys' fees. In a unanimous reversal, the appellate court agreed that the parent was the alter ego of the shell, reinstated the complaint, and remanded the case for trial on only one issue.

Obtained pre-answer dismissal of a complaint filed in New York alleging claims of forgery and fraud in connection with a dispute between citizens of China and Norway over the ownership of real property in China. In granting the motion to dismiss, the court accepted our arguments that the claims against our clients (individual co-defendants) were time-barred and precluded by a 2015 judgment of a Chinese court pursuant to the doctrines of comity and res judicata, and in the alternative should be dismissed on forum non-conveniens grounds.

*US Bancorp Equipment Finance v. Abraham Rubashkin, et al.*, \_\_\_ A.D.3d \_\_\_, (2d Dept. September 19, 2012)

*210 West 70 Owner LLC v. Cosmic Group LLC*, \_\_\_ Misc.3d \_\_\_ (App. Term 1st Dep't 2012)

*Murray Hill Mews Owners Corp. v. Rio Restaurant Associates, L.P.*, 26 Misc.3d 1224(A)(Civ Ct. N.Y. Co. 2010), reversed, 30 Misc.3d 129(A) (App. Term 1st Dep't), reversed, 92 A.D.3d 453 (1st Dep't 2012)

*2 GCT Partners LLC v. Stadia Capital LLC*, New York Law Journal, Decisions of Interest, December 2, 2009, p. 28, col. 1 (Sup. Ct. New York Co.)

*Nestor v. Britt*, 13 Misc. 3d 368, 834 N.Y.S. 2d 458 (Civ. Ct. N.Y. Co. 2007), affirmed, 19 Misc. 3d 142(A) (App. Term 1st Dept.)

*East Best Food Corp. v. NY 46th LLC*, 56 A.D.3d 302, 867 N.Y.S.2d 77 (1st Dep't 2008)

*Morris Heights Health Center, Inc. v. Dellapietra*, 38 A.D.3d 261, 834 N.Y.S.2d 9 (1st Dep't 2007)

*Blenheim LLC v. Il Posto LLC*, 14 Misc. 3d 735, 827 N.Y.S. 2d 620 (Civ. Ct. N.Y. Co. 2006)

*H.R. Neumann Associates v. The New Eagle, Inc.*, 6 Misc. 3d 1027(A) (Civ. Ct. N.Y. Co. 2005)

*Hudson Waterfront Associates, IV, L.P. v. MTP 59 St. LLC.*, 8 Misc 3d 136(A), 803 N.Y.S. 2d 18 (App. Term 1st. Dept. 2005)

*150 Broadway N.Y. Associates L.P. v. Bodner*, 14 A.D. 3d 1, 784 N.Y.S.2d 63 (1st Dept. 2004)

*20 Henry Street Associates v. Various Tenants*, New York Law Journal, September 1, 2004, p. 19, col. 1, 32 HCR 547A, (Civ. Ct. Kings Co.)

*The New Eagle, Inc. v. H.R. Neumann Associates*, 4 Misc. 3d 1005(A) (Sup. Ct. Kings Co. 2003)

*Excell Graphics Technologies, Inc. v. CFG/AGSCB 75 Ninth Avenue LLC*, 1 A.D. 3d 65, 767 N.Y.S. 2d 99 (1st Dept. 2003)

*M&A Oasis, Inc. v. MTM Associates, L.P.*, 307 A.D.2d 872 (1st Dept. 2003)

*Alphonse Hotel Corporation v. 76 Corp.*, 273 A.D. 2d 124, 710 N.Y.S. 2d 890 (1st Dept. 2000)

*Bernstein v. 1995 Associates*, 211 A.D.2d 560 (1st Dept. 1995)

*Colgate-Palmolive Corporation v. Bell, Kalnick, Sassawer, Jackson, Klee, Green & Rudd.*, 203 A.D.2d 122, 610 N.Y.S.2d 44 (1st Dept. 1994), appeal dismissed, 83 N.Y.2d 996, 616 N.Y.S.2d 476 (1994)

*Plaza Operating Partners Ltd. v. Maison Mendesolle Ltd.*, 144 Misc. 2d 696, 545 N.Y.S.2d 233 (Civ. Ct.

N.Y. Co. 1989), affirmed, Appellate Term 1st Dept. 1990

*Mid-Island Shopping Plaza Co. v. Nathan's Famous of Hicksville*, 147 A.D. 2d 536, 537 N.Y.S. 2d 836 (2d Dept. 1989)

*Vance v. Century Apartments Associates*, 61 N.Y.2d 716 (1984)

*Missan v. Schoenfeld*, 95 A.D. 2d 198 (1983), appeal dismissed, 60 N.Y. 2d 860 (1983)

*Thuna v. DiSanza*, 102 Misc.2d 342, 425 N.Y.S.2d 729 (Sup. Ct. N.Y. Co. 1980), affirmed, 78 A.D.2d 517, 432 N.Y.S.2d 976 (1st Dept. 1980)

*Leslie Fay, Inc. v. Rich*, 478 F.Supp. 1109 (S.D.N.Y. 1979)

*County of Suffolk v. Long Island Lighting Company, et al*, 728 F.2d 52 (2d Cir. 1984)

*Turski v. Chiesa*, 58 A.D.2d 828, 396 N.Y.S.2d 667 (2d Dept. 1977)

*33-39 E. 65th St., LLC v. McEntyre*, 2013 N.Y. Slip Up. 50558(6), N.Y.L.J., April 18, 2013. (Civ. Ct. N.Y. Co.)