

Real Estate Litigation

Creating Value For Our Clients

Our Seyfarth Shaw LLP real estate litigation attorneys bring a wealth of experience in such critical and diverse areas as commercial lease disputes, land use matters, workout-related litigation, real estate partnership disputes, real estate brokerage, and condominium association and cooperative corporation disputes. They have a keen understanding of the business issues involved in these disputes, and work closely with clients to develop a plan of action intended to either quickly resolve or avoid litigation, or position it aggressively for a successful litigation outcome.

When Real Estate Litigation Arises

Whether on topics of concern in a specific region or matters of nationwide scope, attorneys in our offices across the country work seamlessly to address issues that typically arise in real estate litigation, as well as unique issues that may set precedent. Our national coverage and depth of experience provide a foundation that allows us to begin work at a higher level. As part of a full-service national firm, we work closely with attorneys in other practice areas in order to provide clients with a thorough evaluation and assessment of each case, from our colleagues who are familiar with specialized transactional and contract real estate matters to those experienced in complex environmental or construction issues.

A Strategic Approach

We strive for the optimal litigation outcome in all cases, taking into consideration: the importance of relevant issues involved in each case; the strength of a particular case; the direct and indirect costs of litigation; the likelihood of prevailing at the motions or trial stage; and the availability and cost of settlement options. We are committed to early and objective assessment of each case, including an assessment of alternative dispute resolution mechanisms. Many cases we litigate are resolved by dispositive motion. Moreover, we are strong proponents of alternative dispute resolution mechanisms to achieve results desired by our clients. Our lawyers, however, are true trial lawyers and have extensive

courtroom experience—both before judges and juries. We believe that it is our skill as trial lawyers that enables us to consistently achieve favorable results for our clients—whether or not the case is ultimately tried.

Services We Provide

Our clients represent a diverse group including real estate developers, builders, sponsors of co-op and condominium plans, owners/landlords, real estate management companies and investors, lenders, REITs, and neighborhood groups and other parties that have interests that might be affected by abutting properties. The matters we handle for clients cover a broad range of issues, including commercial lease disputes involving demolition and termination clauses, defaults, renewal issues, non-payment matters, as well as illegal detainer actions and condominium association and co-operative corporation disputes.

Our extensive experience is not limited to contract and transactional real estate matters. We work with individuals with business interests and companies involved in disputes relating to partnerships, brokerages, titles, and residential leases, among others. We litigate matters involving bankruptcy and workouts in the real estate context, as well as construction and mechanics' liens issues. Our attorneys also have a thorough understanding of all issues that arise in the context of permits, assisting clients through the maze of administrative procedures involved in the permitting process.

We also work with development teams, from architects and engineers to contractors and other relevant parties, assisting with the conceptualization of a project through permitting and addressing any legal challenges that arise. We frequently are asked to guide project designers through alternative project designs to avoid legal traps and pitfalls and regularly appear before zoning and planning boards and state administrative agencies to protect the interests of our clients.

SETTING PRECEDENT

A developer was denied building permits for reasons that had not been applied to other builders in the community. The property in question had unique landscape characteristics that added complexity to the permit request.

- ▶ A civil rights claim alleging unlawful discrimination was brought against the town and two of its public officers. Due to our extensive trial experience relating to real estate litigation matters, we were hired to represent the developer during trial for this first-of-its-kind case.

Result: After a month-long jury trial, we obtained a verdict in favor of the developer against local officials for several million dollars.

UNIQUE LITIGATION STRATEGIES

A shopping center developer held a land lease with an option to purchase. When the option was exercised, the fee owner refused to convey, claiming that the option was not timely exercised.

- ▶ The case hinged on the definition of "business day," since according to the lease, notice had to be given 30 business days before the exercise date. We developed a theory that Saturdays and Sundays are business days in the retail industry, arguing that the option was in fact timely exercised.

Result: We prevailed on summary judgment, enabling the tenant to realize the profit between the option price and the fair market value of the property of over \$1.5 million.

These represent just some of the areas in which we partner with our clients to resolve issues to a favorable outcome. As litigation has become a risk for companies for whom real estate is the primary business, banks, owners, and developers throughout the country have come to rely on Seyfarth Shaw's real estate litigation team to defend these cases effectively and efficiently and in a manner that brings them to conclusion consistent with our clients' business goals. Our national platform, deep substantive knowledge in real estate matters, lawyers seasoned in litigating these cases, and strategic approach differentiate us and make us a leading firm in this area of practice. ■

FIGHTING FOR OUR CLIENTS

A large group of limited partners had invested in various different single-entity real estate partnerships. The limited partners learned that the general partner had commingled funds and otherwise used partnership assets to support and fund other unrelated partnerships.

- ▶ With detailed preparation, we devised an appropriate strategy to support the claim against the general partner of each of those partnerships for breach of fiduciary duty and defalcation of partnership assets.

Result: We were able to obtain a multi-million dollar recovery from the general partner as well as payment of our clients' attorneys' fees without having to formally commence an action.

ENSURING JUSTICE IS SERVED

The purchaser of two contiguous parcels of real estate in New York City lost an action for specific performance pursuant to a contract of sale on the grounds that they had abandoned the contract. The parties came to us for representation on appeal.

- ▶ We prosecuted an appeal for the client. Our evaluation was that the court below had not carefully reviewed the trial testimony and had mechanically applied the defense of abandonment of contracts.

Result: The Appellate Court unanimously reversed the trial court and directed specific performance in a decision that has become a leading case in New York on the issue of abandonment of contracts.

About Seyfarth Shaw

Seyfarth Shaw LLP (“Seyfarth”) was founded in 1945 by three lawyers and has grown to more than 800 lawyers across 13 markets in the U.S. and abroad. We handle issues for our clients in all key areas including labor and employment, litigation, construction, corporate, employee benefits, environmental, government contracts, intellectual property, commercial litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies and various types of funds. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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