

## **Recent Real Estate Representations**

- Represented **KKR** in a dispute in which the plaintiff attempted to undo a \$77 million sale of real estate to KKR. Quinn Emanuel obtained a complete dismissal of all claims against KKR on appeal. In the process, the New York Appellate Division issued a landmark decision establishing that the Uniform Commercial Code does not allow aggrieved debtors to unwind sales after they have closed.
- On behalf of our client, **Insolvency Services Group (ISG)**, we obtained summary judgment and an award of \$15.7 million against Meritage Homes Corp. related to a real estate development near Las Vegas. The trial court found that ISG could enforce the repayment guaranty that Meritage signed in connection with the venture. The Ninth Circuit affirmed in full.
- We won a complete dismissal for **UniCredit** of all claims brought against it in a long-running real estate dispute.
- We achieved a favorable settlement on behalf of **mezzanine lenders** to the \$5.4 billion acquisition of Stuyvesant Town-Peter Cooper Village—the largest single real estate transaction in U.S. history. Mezzanine lenders brought suit against the mortgage lender and the special servicer to the mortgage loan, among others, in connection with their attempt to transfer the property pursuant to a deed in lieu of foreclosure. In our complaint, we alleged that the defendants breached the applicable intercreditor agreement for, among other things, failing to provide prior notice of the deed in lieu to the mezzanine lenders and failing to obtain prior consent to the transfer of the property from the mezzanine lenders. While the case did not result in a reported decision on our claims, the settlement reflects the robust interpretations we offered with respect to the mezzanine lender's rights under the intercreditor agreement, paving the way for other mezzanine lenders in future disputes.
- We represented **Infinity World**, a subsidiary of Dubai World, one of the world's largest holding companies, in its dispute against MGM MIRAGE over the funding of the \$8.5 billion CityCenter project in Las Vegas. A little over one month after we filed a complaint against MGM in the Delaware Chancery Court, MGM and CityCenter's lenders capitulated to Dubai World's demands. MGM agreed to fund its remaining equity contributions to be solely responsible for potential cost overruns and to pledge additional collateral as security for its funding obligations. CityCenter's lenders agreed to fund the full \$1.8 billion promised under CityCenter's senior credit facility. The settlement ensures that the CityCenter project, which is expected to be a powerful engine for growth and employment in Las Vegas and Nevada, will be completed.

- We obtained for our clients—senior executives of **Paulson & Co. Inc.**—a complete and decisive dismissal of a civil complaint brought derivatively by Five Mile Capital which sought more than \$158 million in damages. The executives were directors of a portfolio entity, MSR Hotels & Resorts, Inc. This total victory makes clear that our clients properly served all duties and also clears the way for MSR to successfully emerge from bankruptcy in 2014.
- We were brought in shortly before trial to assume lead counsel role in representing **Americana at Brand**, its parent company **Caruso Affiliated**, **Caruso Management Company**, and **the company's CEO** in a case brought by Primo Hospitality Group arising out of Primo's failed restaurant venture at Americana. Primo sued for over \$7 million in compensatory damages, as well as unspecified punitive damages, against the four Caruso parties on a variety of contract and tort claims. Americana cross-claimed against Primo and its principal owners personally for \$1.4 million for breach of contract arising out of Primo's abandonment of its ten-year lease. Caruso Affiliated and Rick Caruso unconditionally defeated all of Primo's claims against them. Americana won more claims than Primo did and was a net winner against Primo by more than \$1.6 million after attorney's fees were awarded to Americana as the prevailing party on the contract claims in the case. Caruso Management Company was held liable to Primo for \$560,000 on several of Primo's tort claims.
- We represent **KB Home**, **Toll Brothers**, **Pardee Homes** and **Beazer Homes** in connection with litigation, arbitrations and a bankruptcy relating to the development of the "Inspirada" master planned community in Henderson, Nevada. Our work on the Inspirada development has included litigating claims by lenders over the terms of the project's \$585 million credit facility and the extent of recourse available to the transaction sponsors, arbitrating disputes between the project's consortium of partners, litigating claims under completion and non-recourse carve out guarantees and compelling performance by adjoining landowners of covenants running with the land.
- We represented **K. Hovnanian Homes** in a two-week arbitration against Schumacher/60th and Monroe Partners, LLC in a dispute arising from a land purchase contract. We prevailed and the arbitrator ruled that Schumacher failed to meet pre-closing milestones, which excused K. Hovnanian's obligation to close, and awarded K. Hovnanian not only its deposit back, but attorneys' fees and costs incurred.
- We represented **Playa Vista**, a master land developer in Southern California, in a dispute with a well-known real estate developer in which the real estate developer sought almost \$700 million in damages for breach of a series of land purchase agreements. With an early motion in limine, the judge excluded the vast majority of the claimed damages, and the case settled shortly thereafter for a nominal amount.
- We represented **Mammoth Lakes Land Acquisition, LLC** in a two-week jury trial resulting in a verdict finding breach of contract against the Town of Mammoth

Lakes. Our client obtained a judgment of \$30 million, along with an award of attorneys' fees. This was the largest jury verdict in the history of Mono County, California and the 67<sup>th</sup> largest verdict in the nation in 2008. Defendant appealed, and the firm's appellate attorneys successfully persuaded the California Court of Appeal to affirm the judgment in full.

- We act for the **government of Azerbaijan** in an UNCITRAL investment treaty arbitration concerning a high-value real estate site in the center of Baku, Azerbaijan. The claimants entered into an agreement for the development of a large-scale commercial and residential complex known as the "Baku World Trade Centre". The site was intended to house embassies together with ancillary facilities, including hospitals, schools for expats, shopping centers, and cultural and entertainment facilities. The claimants' claim for the resale value of the site had it been developed: \$240 million. The case involves consideration of complex expert evidence including measuring the real value of comparable transactions, and dealing with issues of zoning, land use, and applicable local construction regulations.
- We represented **Fannie Mae** in numerous real estate disputes, from multi-family developments to large single-family and commercial mixed developments. We currently represent Fannie Mae in a large dispute involving an apartment complex that has been impacted by a landslide and other events that has required the property to be vacated and has led to insurance claims and issues with the owner that involve tens of millions of dollars. We have represented Fannie Mae in disputes involving allegations of pollution of water in areas covered by developments on which Fannie Mae provided loans and in other matters involving mortgage-backed securities. We have won or resolved all of our Fannie Mae matters on business terms better than those set at the beginning of the case by our client.
- We are lead counsel to **Chartis** in the multi-district litigation and several related class actions involving thousands of claims related to defective Chinese manufactured drywall, as well as litigation seeking compensation from the Chinese and German manufacturers of the defective products.
- We obtained an 8-figure settlement for plaintiffs during a jury trial in a San Jose real estate partnership dispute.
- We represented a ninety-year-old, disabled **World War II veteran** in successful defense of a judgment vacating the transfer of over 1,000 acres of ocean front property north of Malibu based upon the exercise of undue influence, restoring to our client real estate estimated to be worth up to \$200 million. Acting on an expedited basis, the California Court of Appeal unanimously affirmed the judgment less than a week after oral argument.
- In a commercial lease dispute in which we represented one of Los Angeles' largest commercial produce distributors, **Borg Produce**, we obtained a unanimous jury verdict of nearly \$3 million dollars for fraud and breach of contract on CAM

overcharges, as well as a complete defense verdict on claim for nuisance and breach of the lease by our client. The jury's verdict included a finding of fraud, oppression or malice and, on the morning of the punitive damage phase of the trial, the case settled for an amount in excess of the verdict. Prior to trial, our client offered a substantial payment to settle the case.

- We represented **Triple 5 Corporation** in a dispute over management of the Mall of America and helped obtain control of one of the largest commercial properties in the world.
- We represented **Packaging Advantage Corporation**, the leading manufacturer of hospitality sized soap, shampoo and related products, in a case against its landlord over our client's lease of a manufacturing campus in Southern California. The landlord sought a declaration that the manufacturing company had breached the lease so that the landlord could evict the manufacturer and redevelop the property or, at a minimum, terminate the manufacturer's option to extend the lease to 2014 on favorable terms. We prevailed after a three-week trial.
- We represented a **NFL football stadium** in a highly publicized dispute with an NFL franchise that leased the stadium. The case involved a breach of the lease between the team and the stadium, the intention of the team to move to a new stadium in a nearby city, and complex damages and mitigation issues relating to the unique use and development potential of the stadium property. We obtained a recovery of nearly \$30 million for our client.
- We represented a **real estate developer** in a two-week trial against a civil engineering firm. The jury awarded the developer \$4.5 million and found that the engineering firm had engaged in intentional fraud warranting punitive damages. The engineering firm agreed to settle before the punitive damages phase, for the full amount of the verdict, plus interest, and all costs and fees that the developer incurred.
- We represented public company home builder **TOUSA** in connection with a \$675 million claim brought by Deutsche Bank based on the default of an off balance sheet structured financing used to fund the largest acquisition of home sites in Florida history. We successfully brought claims against the engineering firm that improperly estimated the cost of horizontal land development, contributing to the default in project financing.
- We represented **People's Choice Mortgage** and obtained summary judgment of class claims in the millions of dollars based upon allegations of lender misconduct against a lender from which People's Choice purchased a significant number of mortgages which it then packaged into mortgage-backed securities.

- We represented **Kmart** in a multi-million dollar lease dispute with the landlord of one of Kmart's Northern California stores. We obtained dismissal of the case with prejudice on the eve of trial.
- We represent **Poe Development** against another major developer in a dispute over the development of a 5-stage project in the Santa Clarita Valley that involves a mixed development of thousands of homes, together with commercial and retail space. The dispute centers on allegations that the defendant developer failed to discharge its duties in moving the project to conclusion and in acquiring water for the project, at the same time when the defendant was using money for the development in pursuing other projects and was improperly making loans to itself at inflated rates while failing to take advantage of available loan facilities in the marketplace at much lower rates, thus violating its fiduciary duties by appropriating to itself most of the profits from the project.
- We negotiated a 90 percent reduction in cost of improvements sought by the City of Rancho Mirage placed on approvals for the development of property by **Landmark Land Company**.
- We represented **KYOWA Building Company** in a lawsuit related to the sale of a large parcel of Beverly Hills real estate and a sanitary landfill in Hawaii, in a case involving complex issues related to securities transactions and disclosure laws. We obtained a very favorable settlement.
- We represented a **Zurich Re subsidiary** in connection with its provision of funding to a real estate partnership, which invested in condos and co-ops in New York, after the controlling partner of that entity died and it was discovered that he engaged in fraud.
- We represented **IBM** in a real estate dispute brought by several developers who claimed that IBM breached a contract for sale of land, by allegedly failing to assist the developers in obtaining a zoning variance from the City Council. We won a dismissal of the fraud claim on summary adjudication, and, after filing several key motions *in limine*, settled the case favorably on the first day of trial.
- We represented **U.S. Filter Wastewater Group, Inc.** and **United States Filter Corporation**, both subsidiaries of Vivendi, in defending claims of breach of contract and fraud. Plaintiff alleged that U.S. Filter breached an agreement to assign to plaintiff an option to purchase certain real estate from another party. We obtained summary judgment, and the court granted our clients the substantial majority of their costs and attorneys' fees.
- We represented **Kmart**, and its former subsidiaries, **Borders Book Store**, **Pace Membership Warehouse** and **Builders Square**, in shopping center real estate litigation in many jurisdictions around the United States, the US VI and Puerto Rico. These cases involve a wide range of commercial real estate issues such as lease and

subleasing disputes, alleged violations of restrictive covenants and shopping center agreements, alleged violation of continuous operation covenants, development disputes and issues, easement issues, common area disputes, recording and title disputes, construction litigation, and other property conveyance, leasehold and shopping center development, and operation and sale issues.

- We were retained, more than a week after trial began, to step in and assume the role of lead trial counsel for **Caruso Affiliated Holdings**, a Southern California developer of "lifestyle" shopping centers, against General Growth Properties, the nation's then-second largest mall developer. Client alleged interference with prospective business relations based on threats General Growth made against a prominent nationwide restaurant chain to discourage the chain from becoming an anchor tenant in Caruso Affiliated's new shopping center across the street from the super-regional mall in Glendale, California owned by General Growth. Obtained jury verdict of \$89 million, \$15 million of which was punitive damages.
- We represented a **New York based asset manager** in a dispute regarding the management of a billion dollar commercial real estate portfolio. An action was filed against our client in New York Supreme Court, alleging the receipt of various improper fees, and seeking to rescind our client's residual interests in more than a dozen properties it holds under management. We obtained a favorable ruling on a motion to dismiss, thereby eliminating the lead counts in the complaint and the broadest claim for damages, and ultimately secured a settlement on favorable terms.
- We represented **funds managed by M&G Investment Management** in claims against Deutsche Bank connected with a failed CMBS financing of a German real estate development. Our clients alleged that material misrepresentations were made by Deutsche Bank (the senior lender) at the time they acquired their junior participation in the structure.
- We represent **Graham Harris and companies controlled by him** in a series of disputes with NAMA, the Irish "bad bank," arising out of the development of a group of aparthotels in Central London. The developments were financed by Irish banks that failed in the course of the Irish financial crisis. In the course of the banks' slow collapse, they defaulted on drawdown obligations owed to the development companies. In turn, this led to development delays and payment defaults by the development companies, following which NAMA appointed administrators to the companies. The two largest disputes concern the continuing rights of Mr. Harris' businesses to occupy the part-completed premises and whether, in the face of the banks' default, NAMA can enforce Mr. Harris' personal guarantees given in respect of the companies' borrowings.
- We represent **Derek Quinlan** in ongoing litigation concerning the ownership of the Maybourne Hotel Group, which owns and controls London's Claridge's, Connaught and Berkeley hotels. The business is valued in excess of £1 billion. The litigation is one of the largest disputes in London's courts and involves a number of separate

proceedings. We prevailed in a three month trial in 2012 and upheld that verdict in the Court of Appeal in 2013. We continue to fight proceedings in the Chancery Division of the High Court and the Commercial Court.

- Obtained a multi-million dollar settlement for a **real estate developer** in a dispute with a joint venture partner over the failure of the joint venture partner to adequately supervise the construction of the joint venture's condominium towers.
- Represented a **joint venture partner** against partner/contractor when the contractor decided, without consulting our client, to construct the 140-unit condominium project using a column cap system and excessive separation of the columns which resulted in structural deflection that the contractor discovered, but concealed from our client. The case settled with contractor buying out our client's interest in the joint venture.