

Stephen F. Ellman, SENIOR COUNSEL

Stephen F. Ellman focuses on commercial litigation for financial institutions and other clients involved in business disputes, complex real estate matters, residential real estate lending defense claims and counterclaims, claims avoidance and creditors' rights issues. Steve has represented lenders and special servicers in a host of matters ranging from commercial mortgage foreclosure actions to complicated restructuring deals, including complex structured finance transactions involving multi-tiered mezzanine financing and intercreditor agreements.

Steve has also represented clients in class action litigation involving credit card finance charges, mortgage interest rate adjustments and New York's consumer protection statute involving good faith estimates of settlement costs in residential mortgage loan transactions. Steve works closely with in-house counsel on a variety of commercial matters, including claims arising under the Uniform Commercial Code. Steve has argued successful appeals before the United States Court of Appeals for the Second Circuit, the New York State Court of Appeals and the First and Second Judicial Department Appellate Divisions.

Following graduation from Georgetown University Law Center, Steve became a Law Assistant to the Justices of the New York State Appellate Division, Second Judicial Department. As an associate with Shearman & Sterling in New York, Steve was assigned to the Bank Litigation Team. Thereafter, he moved in-house to the Legal Department of Manufacturers Hanover Trust Company, where he was a Vice President and Senior Counsel. Steve was a founding member of ZEK and was a member of the Firm's management committee.

Now Senior Counsel, Steve continues to believe that in the era of mega law firms, ZEK provides clients with a unique alternative for sophisticated, practical representation at reasonable cost.

EXPERIENCE

- Engaged by special servicers of CMBS loans and commercial portfolio lenders to represent lenders' interests in a multitude of mortgage loan delinquencies, including matters involving the impact and effect of carve out guaranties and lender liability defenses and claims. Representation has included workouts, foreclosures and loan and judgment sales involving more than 100 commercial properties, many of which have had complex capital structures with multi-tiered debt and inter-creditor relationships. These properties have included office buildings, malls, strip shopping centers, multi-family properties (including government subsidized properties), vacant development land, mobile home parks, historically designated properties and environmentally contaminated properties. Extensive experience in real property receiverships, including





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various issues that arise, such as fire damage to property during a receivership, claims against receivers and receivership issues arising out of limited income being generated by the mortgaged property.

- Workout of multi-million dollar loan secured by a mortgage spread over 12 commercial properties. Forbearance Agreement provided for orderly liquidation of portfolio at designated release prices per parcel and other terms. Representation included protecting lender's interests following a partial emergency demolition by NYC as a result of arguable potential imminent collapse of one of the buildings. Debt was satisfied in full over time as a result of borrower sales and deeds-in-lieu transactions.
- Represented lender in commercial workout involving vacant land, which included creative forbearance agreement giving borrower time to sell the property but permitting lender to start either a judicial or non-judicial foreclosure proceeding, to be uncontested in either event, if borrower did not close by a date certain, well in advance of the forbearance period expiration. Since NY's non-judicial foreclosure statute was not renewed, we started a judicial foreclosure proceeding upon the sunset of the non-judicial foreclosure statute with sufficient lead-time to obtain a judgment soon after the forbearance period expired. Lender was paid in full. Thereafter, borrower's attorneys, themselves principals of a commercial lender, retained the firm to handle a delinquent mortgage loan on their firm's behalf.
- Substituted as counsel by client that held a blanket mortgage encumbering more than 20 commercial properties securing payment of multi-million dollar loan. Prior counsel began enforcement proceedings through a series of non-judicial foreclosure sales. Negotiated resolution of professional malpractice claim, closed on the pending sales without negative title insurance ramifications and, through negotiation with borrower, negotiated disposition of remaining encumbered real estate.
- Assumed representation of lender in a commercial foreclosure proceeding in which guarantors unconditionally guaranteed payment of multi-million dollar loan secured by prime residential development lots. One of the guarantors filed a bankruptcy petition in California while the final judgment of foreclosure and sale was pending for signature before the trial court judge, which resulted in the trial judge staying the foreclosure action rather than severing the deficiency claim, if any, against the guarantor and permitting the foreclosure sale to proceed. Quarterbacked the resolution of the bankruptcy case and interplay with the foreclosure case, thereby permitting the foreclosure sale to proceed, with a successful closing to a third-party purchaser.
- Represented SBA licensed lenders in more than 25 workouts and lawsuits seeking recovery of delinquent loans. Many of the loans were secured by mortgages and UCC security interests in personal property. To help maximize recovery, created a template judgment providing for the sale of the mortgaged property and UCC encumbered personalty as part of a single sale individually as separate parcels and then collectively as a single parcel, with the successful bid or bids being awarded the bidder or bidders whose bids generated the highest recovery for the client.
- Representation of residential mortgage lenders in cases in which defenses and counterclaims have been asserted by borrowers, including defenses based on lost notes, lack of standing and lender liability.
- Represented lender in foreclosure of private commercial jet aircraft with international bidding following pre-qualification of bidders. Coordinated the statutorily mandated advertising, additional advertising intended to generate increased interest in sale and, following auction, closing of sale while aircraft was airborne over non-taxable state.



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- Led team of attorneys, and argued appeal resulting in decision that struck class allegations, in case in which plaintiff alleged violation of New York consumer deceptive practices statute, fraud and breach of contract arising out of claim that the lender misrepresented closing fees and expenses and estimates incurred in connection with residential real estate loans. Dismissal of class allegations set stage for successful settlement.
- Representation of banks in more than 50 cases defending cases arising out of Articles 3, 4 and 4-A of the Uniform Commercial Code and Reg. E.
- Represented two major banks, both depositaries with one also as drawee, in obtaining dismissal of case brought against banks by real estate developers seeking multi-million dollar damage award based on a claim that checks payable to the order of various real estate brokerages bore unauthorized indorsements. The banks waived ZEK's conflict and entered into a tolling agreement, thereby avoiding a potentially unnecessary public litigation distraction that might benefit the plaintiffs, with the additional salutatory effect of sharing litigation expenses.
- Assumed representation of a bank in a case in which the trial court granted summary judgment against the bank on the ground that the bank improperly set off against an account to which a forged certified check drawn on the bank had been deposited. Obtained summary judgment reversal by the appellate division. The reversal was affirmed by the Court of Appeals, following its granting of the plaintiff's motion for leave to appeal to the Court of Appeals, on the ground that placing a hold on a customer's account after it honored the forged certified check was not a wrongful dishonor for purposes of the Uniform Commercial Code.
- Represented issuer of commercial letter of credit in obtaining dismissal of action commenced by foreign beneficiary for alleged failure to honor a draw, which issuer refused to honor based on beneficiary's fraud. Conceptualized idea to make a cross-motion for an award of attorneys' fees (as permitted under the governing law of Pennsylvania) in response to NY's expedited summary judgment in lieu of complaint (action commenced without service of formal complaint). The court not only denied the plaintiff's summary judgment motion, but awarded our client attorneys' fees and directed a hearing for determination of such amount. Case settled upon the foreign beneficiary's payment of stipulated amount of attorneys' fees and release of all claims and appeal rights.
- Counseled U.S. bank that confirmed letter of credit where the client concluded that a draw by the beneficiary strictly complied with the terms and conditions of the credit, which foreign issuing bank disputed.
- Represented temporary receiver of Cemetery, pursuant to court order authorizing such representation, in an action commenced in federal court by holder of promissory note to recover payment on the ground that the plaintiff was a holder in due course. The temporary receiver was appointed on the application of the New York State Attorney General as a result of gross mismanagement of the Cemetery's affairs in violation of the New York State Not-for-Profit Corporation Law and the board's fiduciary duties.
- Represented lender in obtaining multi-million judgment against guarantors of a corporate loan. Representation included negotiation of judgment sale agreement to purchaser introduced by one of the guarantors. Judgment sale agreement contained detailed representations and warranties by guarantors to confirm that they did not have any direct or indirect interest in the loan purchaser or its principals. Guarantors subsequently indicted and convicted as a result of misrepresentations to the bank, which included financial statement misrepresentations and misrepresentations about the relationship



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between the guarantors and loan purchaser principals. Bank received additional restitution by one of the guarantors following conviction.