

## SERVICES

# Financial Services Litigation

## KEY CONTACTS

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## OVERVIEW

## FINANCIAL SERVICES LITIGATION

Due to uncertain economic times and ever-changing regulatory landscapes, many of our financial services and bank clients are facing a panoply of legal disputes and litigation. We have experience pursuing litigation on behalf of financial institutions to protect their interests and recover losses as well as defending them when they face claims or lawsuits. Banks and other financial institutions need now, more than ever, to reduce and manage legal, regulatory, financial and reputational risks.

Our litigators draw upon experience of our seasoned commercial lending team, including attorneys with regulatory experience.

### How we can help

- Check fraud and wire transfer fraud
- Workout/bankruptcy
- Mortgage fraud and other issues related to mortgages
- Litigation and investigations involving regulatory issues
- Fiduciary litigation
- Failing investments and disputes
- Lender liability
- Compliance
- Risk management
- Government investigations
- Directors and officers disputes
- Tax controversy

- Shareholder dispute issues
- Bank operations and collections

## EXPERIENCE

### Negligence and Breach of Fiduciary Claims (Elder Abuse)

Successfully defended Webster Five in an action for fraud and deceit, and negligence arising from the conversion of over \$500,000 of investment funds and redemption of savings bonds and the wrongful withdrawal of an additional \$560,000 from a bank customer which was accomplished through fraud and deceit. Allegation was the bank failed to hold the monies in trust and failed to follow its policies regarding transfer or withdrawal of funds. Resolved claim for \$15,000, secured a confidentiality provision to avoid embarrassment and negative publicity to the bank, and prepared witnesses and successfully staved off attempts by co-defendant to disclose the agreement and/or testify in open court.

### Mortgage Contest

Successfully defended regional bank and reaffirmed the validity of a contested mortgage in a Land Court action where the Plaintiff sought rescission of her mortgage and additional damages under G.L. c. 93A.

### RESPA/TILA Violations

Successfully defended regional bank and staved off RESPA and TILA violations for an alleged wrongful foreclosure and breach of loan modification agreement. Plaintiff also brought claims under Gl. c. 93A. Entered into a confidential settlement that was advantageous to our client.

### Check Kiting

Successfully prosecuted a claim brought on behalf of a bank for damages in the amount of nearly \$200,000 arising from a check kiting scheme engaged in by the bank's customer. Was able to successfully recover proceeds from the sale of fraudulently transferred property and also assisted the bank with resolving its insurance claim, involved claims for fraud, civil conspiracy, violation of Gl. c. 93A, and fraudulent transfer of real estate.

### Predatory Loan Practices

It was alleged that Downeast Mortgage Corporation engaged in predatory loan practices in violation of G.L. c. 183C and conducted a wrongful foreclosure in violation of G.L. c. 93A. After completing discovery and serving a dispositive motion on the plaintiff, the matter was successfully resolved whereby the plaintiff affirmed the validity of the foreclosure in exchange for a single payment of \$15,000 and forgiveness of the deficiency owed.

### Work-Out/Receiver/Commercial Foreclosure

Successfully obtained a receiver for a multi-unit apartment building and negotiated and oversaw the sale of the building at a public auction pursuant to the terms of the note and mortgage.

### Commercial Foreclosure

In response to a commercial foreclosure filing, the Defendants filed both a Verified Answer and Counterclaim in the foreclosure action as well as a separate action entitled The Pump Shop, Inc., n/k/a The Clear Light Center., CLC Furnace, Inc., CLE Equipment, Inc. v. Thomas Sogard and TLS Realty Corp.,

as Franklin Superior Court Civil Action No. 08-00024 against TLS Realty and Thomas Sogard individually asserting 30 different counts and alleging, among other things, causes of action for fraud, negligent misrepresentation, violations of the Consumer Protection Statute, G.L. c.93A, and breach of contract based on identical allegations. We successfully moved for and argued Summary Judgment which resulted in judgment in our client's favor allowing our client to proceed with its commercial foreclosure as well judgment in our client's favor on all of the Defendant's 30 claims.

### Valuation dispute over unfinished condominium development

Our client was a regional bank that had lent to a condominium developer where the project was failing. The borrower went into default and filed for bankruptcy. The borrower thereafter asserted various lender liability claims against the bank. While that suit was pending, the bank moved to lift the automatic stay and at trial won on the valuation issue, leveraged that victory to negotiate a settlement agreement that included a release of all claims against the bank and set an aggressive schedule that the borrower could not meet, causing it to soon default under the settlement agreement, thereby providing the bank with relief from the automatic stay. This was an example of trying the case well and advising the client of the leverage it had obtained to negotiate a favorable agreement that released all claims against it.

### High stakes disputes following bank merger

In an important, high-stakes and very complicated case for our client, Commerce Bancshares (the holding company of Commerce Bank), challenging the treatment of shareholders in its merger with Mercantile Capital Corporation and acquisition of Mercantile Bank in Boston, we successfully obtained summary judgment against the former shareholder plaintiffs in a case before the Superior Court in Worcester. We prepared a first-rate memorandum of law and affidavits in support of the summary judgment motion and did an excellent job with oral argument at the hearing on the summary judgment motions before Superior Court Judge Wrenn.

### OTHER EXPERIENCE

- A regional bank in New England and the Mid-Atlantic turned to us for help collecting a multi-million dollar construction loan on an incomplete condo project that involved extensive litigation in the bankruptcy court. The client realized the return of all of its principal and interest and costs.
- Successfully dismissed a plaintiff's Chapter 93A, consumer protection claim against a Massachusetts savings bank.
- Foreclosed a \$150M first mortgage loan on a 100,000 square foot office building in MetroWest.
- Successfully defended against attempts to convert or dismiss Chapter 11 bankruptcy case to permit section 363 sale of assets free and clear of liens.
- Representation of credit union in residential foreclosure matters, and in bankruptcy cases to obtain lift stay order and related relief.
- Foreclosed mortgage securing \$160M securitized loan on 100,000 square foot commercial office building in Metrowest Massachusetts.
- Successfully defended client against claim asserted under Chapter 93A claim asserted in the United States Bankruptcy Court for alleged unfair and deceptive acts and practices.
- Successfully litigated dispute in Suffolk Superior Court over alleged improper foreclosure by mortgage holder.

- Represented national bank in investigation by Attorney General into bank's role in financing an alleged health care fraud scheme. Secured favorable resolution prior to litigation.
- Challenged Martha's Vineyard Commission authority to impose restrictions on construction permits retroactively on bank owned real estate.
- Conducted internal investigation for regional financial institution in response to allegations of employee misappropriation of client funds.