PRACTICE

Real Estate, Land Use & Environmental Litigation

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OVERVIEW

Developers, towns, utilities, and property owners in a variety of industries depend on our litigation team to resolve disputes and, if necessary, try cases. Our real estate, environmental and litigation teams partner to develop knowledgeable and cost-effective solutions.

While environmental litigation involves environmental rules, permits, and enforcement, in addition to hazardous waste and natural resources liability, land use litigation applies to the local appeal of zoning decisions or permit denials within the municipal or county government and the review of such local decisions in state and federal courts.

We understand the effects that such environmental regulation and governmental decisions can have on industrial, commercial and governmental enterprises, enabling us to frame approaches to litigation that protect the competitive or financial strength and operational flexibility of our clients.

EXPERIENCE

Successfully defended a national retailer against allegations of real estate fraud

A national retailer faced accusations of fraud and a multi-million dollar claim when it sold a commercial property in New England. Our client bought the property, a former gas station located at a prominent intersection, from a previous business and sold it to a native and long-time resident of the community. Despite knowing the property's past use, the buyer claimed that our client fraudulently said the site was environmentally clean. We tried the case in the plaintiff's home town and presented the jury with witnesses and other evidence that he knew the site was a former gas station and had seen it being remediated. After the other side presented its case, we argued that the plaintiff had not proven his case and moved for a directed verdict, which the judge granted.

Forcing the sale of a historic commercial property

For two years, a local father/son commercial real estate company negotiated to buy a building in the heart of one of Boston's key, historic neighborhoods. During that period, they managed and improved the property, investing hundreds of thousands of dollars on the strength of a handshake. The owner kept delaying the purchase/sale agreement. Finally, when it came time to follow through with the transaction, the seller upped the price. We filed for a preliminary injunction to force the sale at the

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PARALEGALS

Stephanie R. Fleming

handshake price…and won. Our client has been able update the property in a way that helps uplift the entire neighborhood.

Taking a zoning case all the way to the Appeals Court and prevailing

A central Massachusetts building inspector said that a billboard was too tall, despite a prior inspector's issuance of a building permit for the billboard and the billboard's compliance with that permit. The inspector ordered our client to lower the sign or tear it down. We argued that the building inspector had exceeded his authority. Our client lost its appeal of the order at the ZBA level and then headed to state superior court. When the Court denied cross-motions for summary judgment and crafted an equitable remedy of its own, our client appealed to the Massachusetts Appeals Court, where we successfully argued the applicability and interpretation of the town's zoning by-laws to a panel of three.

Obtaining a preliminary injunction keeps a craft brewery in business

When a craft brewery in Massachusetts was told that it had violated its lease, it could have put them out of business and killed a key part of its town's revitalization. The dispute was over the presence of food trucks and live music. We prevailed at a preliminary injunction stage because the judge was persuaded by our client's real life story. We were aggressive in making our case, written and oral, and it was the right strategy, since a preliminary injunction has to meet a very high legal standard. Pending final resolution, our client is still operating…business as usual.

Resolution of commercial lease dispute

Our client, a historic international business, was sued by a commercial landlord when it relocated its warehouse. The landlord of the vacated property brought suit alleging numerous breaches of the lease including insufficient notice, failure to remove equipment and failure to repair certain portions of the property. We brought counterclaims on behalf of our client against the landlord. After an aggressive discovery process, we negotiated a resolution prior to trial. There are many considerations in determining a litigation strategy, including, for example, risk, public relations, litigation costs and return on investment, future business dealings, etc. Sometimes the best business decision is to resolve a dispute in a cost-effective way, even if you are convinced that you would win at trial.

OTHER EXPERIENCE

- In a major case, we successfully defended a developer's appeal of Superior Court's allowance of a motion to dismiss in matter where the plaintiffs challenged development of shopping center, alleging that town officials had given the developer preferential treatment in zoning decisions for the site. Appeals Court affirmed dismissal of lower court case for lack of standing.
- Prevailed on behalf of a developer, successfully opposing a Residents' Zoning Board Appeal involving issues of standing and the application of the term, "retail health center" as defined in the Hopkinton zoning by-laws.
- Obtained favorable verdict in trial representing commercial tenant against its landlord for failure to remediate property after extensive damage caused by landlord's negligence.
- Declaratory judgment action contesting MassDEP's interpretation of the term "oil" as used in the Massachusetts Contingency Plan. Reported as *Peterborough Oil Company, LLC v. Department of Environmental Protection*, 474 Mass. 443.
- Defense of a former property owner on claims for reimbursement of clean-up costs for petroleum-contaminated soil, under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and G.L. c. 21E. Reported as *Cariddi v. Consolidated Aluminum Corp.*, 478 F.Supp.2d 150 (D.

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Mass 2007).

- Defense of claims by property owners for alleged property damages and personal injuries associated with groundwater contamination from oil releases at service areas along the MassPike in Charlton. Reported as *Scavone v. Massachusetts Turnpike Authority*, Worcester Superior Court (No. 94- 1098,) 1994WL 902896; *Kempinski v. Massachusetts Turnpike Authority,* Worcester Superior Court (No. 99-1277B), 11 Mass. L. Rptr. 435; *Zagloba v.Massachusetts Turnpike Authority*, Worcester Superior Court, 11 Mass. L Rept. 414.
- Defense of claims brought against a municipality for damages and personal injury arising out of the release of gasoline from underground storage tanks. Reported as *Gleason v. Town of Bolton*, Worcester Superior Court (No. 99- 01194), 14 Mass L. Rptr. 678.

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