

Commercial Real Estate Finance Workout, Foreclosure and Litigation

Miller Canfield represents lenders (special servicers, financial institutions, private investors, and other creditors) and receivers appointed by courts over commercial real estate.

Our dedicated commercial real estate and foreclosure team offers an extensive range of services to our clients in connection with the enforcement, workout and foreclosure of defaulted commercial mortgage loans and distressed properties. Many of our team members have exclusively handled these matters for decades. Our team is backed by over 200 attorneys and paralegals across all practice areas and industry teams, including specialties in bankruptcy, tax, litigation and environmental law.

We help our clients maximize their recovery on distressed commercial real estate assets. Our cross-disciplinary team creatively leverages its tools and expertise to craft transactional and litigation solutions that fit our clients' business goals. Our full-time workout professionals are recognized among the best in the country and are known for solutions-oriented, diligent and responsive service.

We have successfully litigated some of the industry's leading cases in connection with novel issues, particularly involving receivership sales, lender liability, deficiency liability, springing liability and guarantee enforcement, and assignments of leases and rents.

Representative Matters

Miller Canfield attorneys offer an extensive range of services to our clients in connection with the enforcement, workout and foreclosure of defaulted commercial mortgage loans and distressed properties. Our experience includes all property types, including office, retail, industrial, multi-family, hospitality, regional shopping malls, manufactured housing communities and senior living.

In addition, we have successfully litigated some of the industry's leading cases in connection with novel issues, particularly involving receiver's sales, lender liability, deficiency liability, springing liability and guarantee enforcement, and assignments of leases and rents (and persistent collateral rights thereunder). Among our representative engagements and matters:

Guarantor Lawsuits

- Represented CMBS special servicers in a pair of guaranty suits establishing full recourse liability on carve-out guarantees arising out of the breach of the single-purpose entity covenants, namely for the borrower's failure to remain solvent.
- Represented a CMBS special servicer in a federal court suit obtaining full recourse on a carve-out guaranty based on the borrower's post-default transfer of mortgaged property, and in the subsequent month-and-a-half trial to pursue companion fraud claims, in connection with a \$34 million obligation.
- Represented a national lender in connection with all aspects of the collection of a \$9.5 million judgment, including the pursuit of fraudulent transfer claims, at all stages, including in the state circuit court, Michigan Court of Appeals and Michigan Supreme Court

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- Represented a national lender in connection with the collection of a \$2.5 million judgment against multiple guarantors

Post-Judgment, Collection Matters and Pursuit of Fraudulent Transfers

- Represented a national lender in connection with all aspects of the collection of a \$9.5 million judgment, including the pursuit of fraudulent transfer claims, at all stages, including in the state circuit court, Michigan Court of Appeals and Michigan Supreme Court
- Represented a national lender in connection with the collection of a \$2.5 million judgment against multiple guarantors

Receiverships and Receivership Sales

- Represented a secured creditor in several federal court foreclosures and receiverships in connection with \$80 million in dairy farm credit facilities
- Represented a receiver appointed over commercial property, which was successfully sold free and clear of redemption rights over a borrower's objection that such an act would clog the equity of redemption
- Represented a CMBS special servicer in a \$25 million regional mall workout, where the receiver first shut down, then sold one of the oldest malls in the country
- Represented a receiver appointed over a hotel facing severe distress, including negotiating an agreed settlement and consent sale process, which eventually closed and returned all principal to the secured creditor
- Represented a CMBS special servicer in a \$45 million single-tenant office receivership sale

Forbearance, Workout and Restructuring Transactions

- Representation of a national mortgage servicing company in numerous forbearance/work-out transactions related to the collapse of the home mortgage securitization industry in the mid-to-late 2000s
- Represented a bank in a complex, multi-stage restructuring, workout, and liquidation of a \$40 million relationship involving an operating business, equipment financing, and real estate financing, as well as other creditors
- Represented a bank in complex negotiations with mezzanine lender and others in the capital stack, ultimately effecting a multi-stage restructuring that resulted in a full payoff to the bank
- Represented a bank in the successful financial restructuring of an office building and entertainment venue
- Represented a regional bank in the workout of a \$28 million multistate loan portfolio acquired from the FDIC
- Represented a national lender in restructuring a \$18 million loan relationship involving a 10-property industrial portfolio
- Represented a CMBS special servicer in a multi-stage workout of a an aggregate \$35 million cross-defaulted portfolio of six properties, involving multiple loan restructurings and a deed-in-lieu-in-escrow transaction

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- Crafted unique settlement structure enabling lender to have court-appointed selling agent place industrial property for sale without having to initiate a foreclosure action, accept traditional receivership responsibilities, or risk chain-of-title exposure.

Shopping Mall Receiverships and Foreclosures

- Represented the agent in a multi-stage syndicated loan workout involving a major regional mall, where the property was sold for \$58 million
- Represented a CMBS special servicer in all aspects of the receivership and guarantor litigation concerning a \$31 million loan secured by one of the first suburban shopping malls in a major city, including the subsequent sale of the mall by the receiver to the local municipality
- Represented a special servicer in all aspects of foreclosure and receivership litigation concerning a \$95 million loan secured by a shopping center in suburban Indianapolis
- Represented a CMBS special servicer in all aspects of the foreclosure and receivership litigation concerning a \$46 million loan secured by a suburban shopping mall

Manufactured Housing Workouts and Foreclosures

- Represented a national lender in connection with the workout of a multi-loan portfolio secured by 19 mobile home parks in six states, including foreclosure proceedings, loan workout agreements and subsequent guarantor lawsuits
- Represented a CMBS special servicer in all aspects of the foreclosure and receivership litigation concerning a \$12.5 million loan secured by six manufactured housing communities, including subsequent guarantor lawsuit and the lawsuit to enforce the assignment of rents against the assignee of the sheriff's deed for one of the communities
- Represented a CMBS special servicer in all aspects of the foreclosure and receivership litigation concerning an \$85 million loan secured by ten manufactured housing communities in two states

Hotel Construction Defects Litigation

Represented the owners of a high-rise hotel, which closed for two years after it was originally occupied, requiring complete reconstruction because of defective exterior wall panels and internal HVAC design defects. It is reported to have been the largest lawsuit in the history of that county. The initial mediation took a full week resulting in a settlement with 29 of the 32 defendants, recovering well into eight figures for the client.

Municipal Construction Litigation

Represented a large west Michigan city with regard to an expansion to its drinking water facility. The city was sued by a contractor for \$3 million in damages for delay of the project. We defended the claim and counter-sued for damages with respect to poor workmanship. Utilizing high-technology CAD drawing demonstrations, which were regarded as highly persuasive and effective, we obtained a favorable settlement for the city of \$6.2 million and no payment to the contractor.

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Financial Institution Litigation and Trial

- Represented a bank in obtaining dismissal of a lawsuit alleging that the bank had breached a subordination and intercreditor agreement, tortiously interfered with the plaintiff's contract, and engaged in deceptive business practices
- Represented a bank in successfully obtaining dismissal, upheld on appeal, of a lender liability suit relating to a condominium association, where the plaintiff alleged that the bank entered into a joint venture, aided and abetted fraud, and was subject to developer/successor developer liability and construction liability claims, among other allegations
- Successful defense of lender liability cases by summary judgment and jury verdict and through appeal
- As trial counsel, successfully defended a national financial institution's interest in real property in case that involved complex and novel issues of priority under mechanics' lien statute

Reported and Published Decisions

- *Dime LLC v Griswold Building LLC*, 2014 WL 3747389 (Mich App, Jul 29, 2014), (summary judgment for lender on deficiency affirmed; sanctions later assessed for appeal taken for hindrance or delay)
- *Wells Fargo Bank, NA v Cherryland Mall Limited Partnership*, 295 Mich App 99 (2011), remanded at 493 Mich 859 (2012), *rev'd upon remand* at 300 Mich App 361 (2013) (guarantor carve-out liability; constitutionality of retroactive application of Michigan Nonrecourse Mortgage Loan Act)
- *Kim v JPMorgan Chase Bank, N.A.*, 493 Mich 98; 825 NW2d 329 (2012) (defects in mortgage foreclosure renders sale voidable, not void; amicus brief on behalf of Real Property Law Section, State Bar of Michigan)
- *7800 W. Outer Drive Holdings, L.L.C. v College Park Partners, L.L.C.*, 2012 WL 2402010 (Mich. App. 2012) (foreclosing lender entitled to predefault rents and real estate tax refunds)
- *8375 Honeytree Boulevard Holdings, LLC v Jeffrey S. Starman, et al.*, 2012 WL 683379 (E.D. Mich. March 2, 2012) (summary judgment for lender on carve-out guaranty for bankruptcy filing)
- *51382 Gratiot Avenue Holdings, LLC v Chesterfield Development Co.*, 835 F.Supp.2d 384, 2011 WL 6153023 (E.D. Mich. 2011), *reconsideration denied* 2012 WL 205843 (summary judgment for lender on carve-out guaranty for insolvency)
- *U.S. Bank National Association v Mobile Associates National Network Systems, Inc., et al.*, 961 N.E.2d H-15, 195 Ohio App.3d 699, 2011-Ohio-5284, 10th Dist. (foreclosure judgment affirmed; prenegotiation agreement bars claim of modification)
- *Livonia Properties Holdings, LLC v 12840-12976 Farmington Road Holdings, LLC*, 717 F.Supp.2d 724 (E.D. Mich. 2010), *aff'd* 399 Fed. Appx. 97, 2010 WL 4275305 (6th Cir. 2010), cert. den. 131 S. Ct. 1696, (2011) (borrower's request for preliminary injunction to enjoin foreclosure sale denied since 'record chain of title' means documents recorded in register's office and borrower lacks standing to contest interim assignments of mortgages in blank)
- *In re Griswold Building, LLC*, 420 B.R. 666 (Bkry. E.D. Mich 2009) (denial of confirmation in single asset real estate case)

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- *Highland Park CDO I Grantor Trust v Wells Fargo Bank, N.A., as Trustee*, 2009 WL 183496 (S.D.N.Y. 2009) (summary judgment on intercreditor agreement)
- *Ivankovich v PAMI Grand Lake, LLC*, 910 N.E.2d 271 (Ind. App. 2009) (summary judgment for lender on guaranty affirmed)
- *AXS Opportunity Fund, LLC v Continent French Quarter, LLC*, 2008-Ohio-1047 (10th Dist., 2008) (contempt of court for violation of receivership order)
- *Check Reporting Services, Inc. v Michigan National Bank - Lansing*, 191 Mich App 614, 478 NW2d 893, 16 UCC Rep2d 1116 (1991) lv den'd 440 Mich 887 (lender liability)
- *In re Briggs, Receiver of Birmingham Bloomfield Bank*, 116 Mich App 267, 324 NW2d 332 (1982) (state bank receivership)
- *Wholesale Tool Company, Inc. v Liberty State Bank & Trust*, Michigan Court of Appeals, Case No. 141391-L (unreported), lv den'd 448 Mich 924 (letter of credit)