

Lender Liability and Guaranty Litigation

Our firm has longstanding experience assisting corporate and individual borrowers and guarantors facing loan default lawsuits, and we regularly litigate against some of the largest lenders in the country, including Bank of America, SunTrust, and Wells Fargo, as well as the largest purchasers of loans, including Bank of the Ozarks, Rialto, and Lone Star. Our representation typically is limited to borrowers and guarantors on commercial, office, or subdivision loans, or in situations in which \$1 million or more is at issue, and we do, at times, represent lenders and other debt holders.

We are attuned to the special, serious needs of our clients, and, for many of them, we have negotiated creative solutions and settlements that have allowed them to avoid trial. We have successfully asserted technical defenses and counterclaims based on wrongful foreclosures, failure to fund, failure to renew, and a host of other theories and defenses that have helped our clients in this type of litigation.

In addition to their experience handling high-value, complex disputes, our attorneys regularly write topical articles for such publications as the Norton Bankruptcy Adviser.

Representative Matters

- We represented multi-family residential developers and their owner against various lenders, including Wells Fargo Bank, in several lawsuits in state and federal court seeking to recover on loans and personal guaranties totaling more than \$150,000,000 and involving substantial real estate located throughout the Southeast. Our firm successfully negotiated a global settlement of all lawsuits with all lenders, resulting in the dismissal of all lawsuits.
- Our firm represented a commercial real estate company and its two shareholders against Inland Mortgage Capital Corporation. Inland sued the real estate company and its two shareholders for a deficiency on a shopping center loan, which was well over \$10,000,000. The shareholders were also sued on their personal guaranties. The case was resolved with a confidential settlement agreement.
- We represented numerous retail space developers that secured multi-phased loans only to have the lender get taken over by the FDIC. After the FDIC takeovers, funding was stopped before our clients completed their projects. We have successfully settled these disputes for our clients.
- A real estate developer retained us to defend against claims based on a note and alleged personal guaranty of a \$1.45 million loan. We prevailed on a motion to dismiss the guaranty claims and, later, on a motion for summary judgment on the remaining claims, a result upheld on appeal to the Georgia Court of Appeals.
- The firm successfully defended a managing member of a limited liability company against multiple claims, including breach of personal guaranty, fraud, and two alternative theories of promissory estoppel, brought by an entity that allegedly made a loan to the LLC that was not repaid. After

securing dismissal of the breach of personal guaranty claim, as well as one of the promissory estoppel claims, we obtained an order granting summary judgment in our client's favor on the fraud and remaining promissory estoppel claims. In the process of eliminating all claims against our client, the firm also secured an order quashing approximately thirty subpoenas the plaintiff served.

- We reached a confidential settlement agreement for our client, who had personally guaranteed a business on which the borrower subsequently defaulted, for roughly one one-thousandth of the multi-million dollar sum the lender originally sought from our client.
- We represented a borrower and guarantors against SunTrust Bank in connection with a multi-million dollar real estate development loan for a residential subdivision. When SunTrust Bank sued our clients, a borrower and guarantors, to recover about \$5,000,000 on the notes and personal guaranties, we filed counterclaims against SunTrust alleging breach of contract and the duty of good faith and fair dealing. Our clients prevailed on summary judgment motions, and the lawsuit settled on favorable terms.
- We represented a liquidating trustee and secured a highly favorable settlement in a suit involving intentional misrepresentations and material concealments related to an alternative energy venture. There were numerous defendants and complex federal and state claims at issue.
- We represented real estate developers in a case against the national law firm they had retained to assist them with the conversion of \$3 million in guaranteed debt to an investment interest in a real estate fund. After the developers' attorneys failed to obtain a cancellation of the indebtedness from the lender, the lender made a formal demand for repayment of the note, and the attorneys concealed their mistakes from the developers, who continued to believe the lender had no claim for repayment. We filed suit against the developers' former law firm and secured a favorable settlement.
- *Wells Fargo Bank v. Berkman*, 2011 WL 709483 (N.D. Ga. 2011) (dismissal of claims against guarantor and LLC members for fraud due to lack of jurisdiction and failure to state claims)
- *All Fleet Refinishing, Inc. v. West Georgia National Bank*, 280 Ga. App. 676 (2006)(successful defense of bank in affirmance of dismissal of fraud, RICO and other defenses to suits on notes)