



SUZANNE M. BERGER

Of Counsel

New York

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BIOGRAPHY

Suzanne Berger's practice has a special emphasis on litigation arising out of commercial loan enforcement, mortgage foreclosures, landlord-tenant disputes and construction issues. Currently, she represents a leading national financial institution, as loan servicer, managing a portfolio of more than 500 contested foreclosures and other mortgage related litigation throughout the state. She also represents various special servicers in connection with multi-million dollar distressed commercial real estate loans in New York City and its suburbs. Suzanne has argued numerous foreclosure cases before the Appellate Division. Representation includes a leading national financial institution regarding the proper forum for a borrower to challenge a securitized mortgage loan and *Dollar Dry Dock Savings Bank v. Piping Rock Builders*, 181 A.D.2d 709, 581 N.Y.S.2d 361 (2d Dep't 1992), which clarified certain aspects of New York's "election of remedies" rule.

Suzanne has argued numerous Freedom of Information Law cases before administrative agencies and trial and appellate courts in New York and other states. She successfully argued the oft-cited Court of Appeals case, *Encore College Bookstores, Inc. v. Auxiliary Services Corporation of the State University of New York at Farmingdale*, 87 N.Y.2d 410, 639 N.Y.S.2d 990 (1995). Suzanne has been with BCLP since 2002. Previously she was special counsel at Robinson Silverman Pearce Aronsohn & Berman LLP.

AREAS OF FOCUS

- Build to Rent/Multifamily

CIVIC INVOLVEMENT & HONORS

- *Fordham Law Review* – Associate Editor, 1983-1984
- Greenburgh, New York, Democratic Town Committee, Chairwoman

PROFESSIONAL AFFILIATIONS

- American Bar Association
- New York Women's Bar Association

ADMISSIONS

- New York, 1985

EDUCATION

Fordham University, J.D., 1984

Barnard College, B.A., *cum laude*, 1978

RELATED CAPABILITIES

- Business & Commercial Disputes
- Build to Rent/Multifamily
- Real Estate Disputes

- Real Estate
- Commercial Real Estate
- Financial Institutions
- Litigation & Dispute Resolution
- Finance
- Financial Services
- Consumer Finance Disputes
- Enforcement
- Litigation
- Regulation
- Appellate

EXPERIENCE

- *Ruiz v. Mortgage Electronic Registration Systems, Inc.*, 130 A.D.3d 1000 (2d Dep't 2015) – affirming the dismissal of borrower's RPAPL Art. 15 quiet title action which claimed that their MERS mortgage was void *ab initio* having been “split” at inception from the debt. The supreme court had termed this a case of “first impression” and though its holding was implicit in the case law, this decision clarifies the rules around MERS' mortgages and short circuits this oft seen claim. Borrower's motion to reargue was denied.
- *Acocella v. Bank of New York Mellon*, 127 A.D.3d 891 (2d Dep't 2015) – affirming the dismissal of borrower's RPAPL Art. 15 quiet title action which claimed that the assignment of the mortgage from MERS to Respondent was a nullity because it had been made allegedly without the corresponding assignment of the Note. The Appellate Division found no justiciable controversy, in part because plaintiffs did not allege that any entity other than Respondent claimed an interest in the mortgage or was entitled to payments on the debt. This case, and *Jahan v. U.S. Bank National Association*, its companion case decided the same day, now stand for the proposition that borrowers cannot pre-emptively challenge a party's standing to maintain a foreclosure action outside the foreclosure action. The court cited *Benson v. Deutsche Bank National Trust Co.*, 109 A.D.2d 495 (2d Dep't 2013) also handled by Bryan Cave.
- *BAC Home Loans Servicing, LP v. McCombie* __ A.D.3d __ (4th Dep't Nov. 13 2015) – affirming that there is no private right of action against plaintiff under TARP (the federal Troubled Asset Relief Program, 12 USC 5211 et seq), dismissing the punitive damages counterclaim and dismissing borrower's negligence counterclaim because the relationship between the parties as mortgagor and mortgagee is a contractual one, and plaintiff owed no legal duty

independent of the mortgage. The appellate court confirmed that plaintiff was under no obligation to grant defendant's request for a short sale or deed in lieu of foreclosure.

- *Bank of New York v. Arden* (2d Dep't June 29, 2016) – affirming that CPLR 3404 is inapplicable to pre-note of issue cases, reversing and restoring a 2005 foreclosure case. The case was previously dismissed and denied restoration after the involved parties failed to appear at a supreme court scheduled conference, reasoning that the plaintiff had failed to move to restore the action within the one-year time limit of CPLR3404 and that the action was deemed abandoned as a consequence. The Appellate Division ruled that the plaintiff was not obligated to move to restore within any specific time frame or to demonstrate a reasonable excuse for its failure to appear for the scheduled conference or even that it had a meritorious claim.

RESOURCES

PUBLICATIONS

- Contributing Author – West New York Practice Series *General Practice in New York (1998)*, Chapter on Mortgage Foreclosure
- N.Y.S. Bar Association 2008, 2010 and 2012 CLE Westchester Panel Chair-2006 Panel Member – “Mortgage Foreclosures and Workouts,” 2002 and 2004; “Foreclosures and other Receiverships,” April and October 2003
- N.Y.S. Bar Association, CLE, Representing a Political candidate, New York Law Primer, April 2008
- Rockland County Bar Ass’n, CLE, Basics of Mortgage Foreclosures, Fall 2010 and Spring 2013

SPEAKING ENGAGEMENTS

- Speaker, The Path to Victory: Representing a Candidate under New York's Election Law, May 2014
- Panelist, "Sanctions: Their Proper Use and Reach," National Association of Consumer Bankruptcy Attorneys 22nd Annual Convention, April 2014

RELATED INSIGHTS

Events
Mar 05, 2024

Of Counsel Suzanne Berger to Present at PLI's 2024 Commercial Real Estate Financing Program

Webinars

Mar 24, 2021

Berger Leads Event on Residential Foreclosure Practice Developments

Insights

Feb 23, 2021

NY Court of Appeals on the Foreclosure Statute of Limitations

The New York Court of Appeals' decision last week, *Freedom Mortgage Corp v. Engel*, contains two "reliable and objective rules permitting consistent application of the statute of limitations."

Insights

Dec 09, 2020

Berger Authors Article for 'Practical Law' on Default Judgments in NY State Court

Insights

May 21, 2020

U.S. COVID-19: New York state's temporary commercial foreclosure ban is inapplicable to proposed sales of collateralized assets governed by the UCC.