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NYSBA

# NYLitigator

A publication of the Commercial and Federal Litigation Section of the New York State Bar Association

The New York State Supreme Court Commercial Division – 30 Years of Empowering Women: Reflections by Hon. Elizabeth Emerson and Hon. Andrea Masley

The Unique Skills of the Appellate Litigator

NYSBA PUBLICATIONS

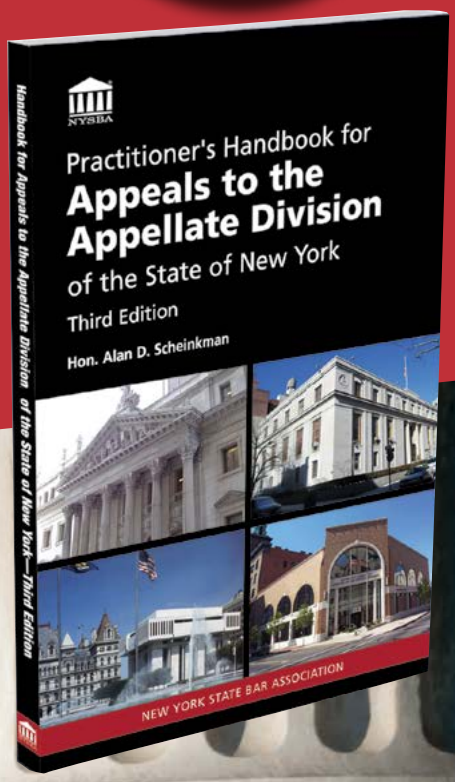
**THIRD EDITION**

Practitioner's Handbook for

# Appeals to the Appellate Division

of the State of New York

**Hon. Alan D. Scheinkman**

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# Message From the Chair

As we begin 2025, I would like to take a few moments to share some thoughts about what we have accomplished over the last six months. Since Anne Sekel passed the torch to me as chair in June, we have held many different programs. Anne's stewardship of the section during her tenure was terrific. She left it more vibrant than ever and I truly hope to continue this success when I turn over the reins to Helene Hechtkopf in June 2025. In the first six months of my tenure, in addition to our monthly EC meetings, we were able to present some excellent programing.

In September, ComFed held a program called "Meet the Commercial Division Judges of New York County." All of the Commercial Division judges of New York County participated in the program, which was designed to hear the justices' thoughts on practicing before them and to field questions regarding many different topics related to commercial litigation. The event was a success and was well attended.

In mid-September, ComFed held its first master class for the law clerks for the Commercial Division. Mark Berman and Paul Downs, chairs of the Commercial Division Committee, arranged for Professor Burt Lipshie to give a CPLR update to the clerks. The second master class was held in November, which focused on accounting. ComFed will be holding more of these master classes in the near future. Thank you, Mark and Paul.

In October, the ADR Committee Chairs Jeff Zaino and Charles Moxley held an event at the AAA called "Mediation in Courts: Progress in New York in Making Mediation a Central Part of New York Practice." The event was well attended and very informative. Charles Moxley served as the moderator with Jeff Zaino making a significant contribution to the program. It was a lively presentation and very well received. In addition, in December, Charles Moxley and Jeff Zaino held a program called "AI and Arbitration Mediation" that was a resounding success.

The "Taking the Lead" program, held on November 13, 2024, featured four junior female litigators and four senior attorneys in a mock trial. The courtroom was filled with 60 to 70 attendees and Chief Judge Laura Taylor Swain delivered the opening remarks, setting the stage for an outstanding program. The panel featured the Honorable Joseph Risi, the Honorable Anne M. Donnelly, the Honorable Anar Patel, the Honorable Jessica G. L. Clark, with the Honorable Shira A. Scheindlin presiding. The panelists skillfully recreated the Ed Sheeran trial, bringing it to life with exceptional insight and presentation. During the event, the Judith Kaye Commercial and Federal Litigation Scholarship was awarded to five outstanding women recognized for their excellence and potential rising stars. In addition, the Honorable Shira Scheindlin Award for Excellence in the Courtroom was awarded to Lauren A. Moskowitz of Cravath, Swaine & Moore, LLP. It was a wonderful night and I extend my gratitude to everyone who contributed and attended the event.

**Michael Cardello III**

In December, Past-Chair Ignatius A. Grande planned a two-day Commercial Litigation Academy program. The program consisted of numerous topics in discussions related to commercial litigation that included many distinguished panelists. The event was a tremendous success and well attended, both on Zoom and in person. The topics included: Venue Decision: State and Federal Court Versus Arbitration, Pleadings in State Court, Federal Court, and Arbitration, Injunctive Relief; Temporary Restraining Orders; Preliminary Permanent Injunctions and Orders To Show Cause; Disclosure and Discovery including E-Discovery; Expert Discovery in State and Federal Court; Dispositive Motions including Motions to Dismiss, Judgment on the Pleadings, and Summary Judgment Motions; Trials; Civil Appeals and Argument; and Mediation Advocacy.

As of the date of this message, the officers, particularly Maryann Stallone, Vice-Chair for ComFed and Program Chair for the Annual Meeting, are diligently working on the Annual Meeting to be held on January 15, 2025. There will be three CLE Programs: 1.) "Appellate Practice," which will feature Chief Judge Rowan D. Wilson and the Honorable Richard J. Sullivan of the Second Circuit Court of Appeals; 2.) "Employee Restrictive Covenants":This program will explore the current legal landscape of employee restrictive covenants focusing on recent state legislation and FTC proposed ban; and 3.) "Interplay Between Surrogate's Court and Supreme Court": This session will examine the interactions between these courts regarding business divorces and succession matters. Chief Judge Debra Ann Livingston of the Second Circuit Court of Appeals will be honored during the luncheon with the Stanley A. Fuld Award.

I am thankful for working with terrific people, including Helene Hechtkopf, Chair-Elect; Maryanne Stallone, Vice-Chair; Viktoriya Liberchuk, Secretary; and Ralph Carter, Treasurer. They have spent countless hours planning all of these events. I could not have a better group of officers to work with me during my tenure as chair. On behalf of all the officers, we look forward to a wonderful second half of my tenure as chair and to seeing everyone at the Annual Meeting.

# The New York State Supreme Court Commercial Division – 30 Years of Empowering Women: Reflections

## Introduction by Anne Sekel

There are certain moments in time when unrelated events conspire to draw one's attention to circumstances that might otherwise go unnoticed, but which are truly noteworthy.

Recently, the retirements of Judge Barry Ostrager from the New York County Commercial Division and Judge Elizabeth Emerson from the Suffolk County Commercial Division highlighted just such a circumstance. To explain, Judge Ostrager's departure from the Court paved the way for Justice Andrea Masley to ascend to the role of senior judge in New York County, and Judge Emerson's retirement from the bench concluded the many years in which she had been the senior-most Commercial Division judge in Suffolk County. That the Commercial Division has such an abundance of senior talent, and in two women no less, is a testament to the uniqueness of the Commercial Division as a judicial institution and is a fact that should not be overlooked. Specifically, while the Commercial Division has long been recognized as a preeminent venue for business disputes in New York, what sometimes may not be as readily apparent is the critical role that women have played in its success and, similarly, the phenomenal opportunities that the Commercial Division affords female judges and attorneys alike.

Therefore, ComFed, as a key proponent of the Commercial Division and a committed advocate for female business litigators in New York, wanted to acknowledge both the Court and the brilliant and trailblazing women – like Judge Masley and Judge Emerson – who already have and continue to contribute to its success. In recognition of these accomplishments, ComFed extended, and Judges Masley and Emerson graciously accepted, an invitation to reflect on their respective paths to the Commercial Division bench and the value that the Court brings to New York State and the practitioners before it. The judges' respective observations follow this introduction.

From its beginning, the Commercial Division was a forum that provided special opportunities for the advancement of female judges. By way of brief background, in 1993, then-Administrative Judge Stanley S. Ostrau piloted a program comprised of four designated parts tasked with handling complex commercial litigations. Somewhat improbably given the composition of the state judiciary at that time, half the judges selected to participate in the pilot were women – in particular, Judge Beatrice Shainswit and Judge Myriam Altman. When the pilot program concluded and practitioners in New York, including ComFed and a state-appointed task force led by ComFed's first chair Bob Haig, called for the establishment of a permanent commercial division, it was then-Chief Judge Judith S. Kaye who created the Commercial Division on a statewide basis. *See* https://ww2.nycourts.gov/courts/comdiv/history.shtml.

Over the years, the Commercial Division has been home to many truly extraordinary female jurists – including Justices Eileen Bransten, Carolyn Demarest, Marcy Friedman, Deborah Karalunas and Shirley W. Kornreich. Their contributions helped shape the Commercial Division into the sought-after venue it is today, and their presence on the bench undoubtedly paved the way for the female justices who followed them. Even more critically perhaps, their presence served as a shining example of the heights which can be achieved by women in the Commercial Division and certainly encouraged female attorneys to persevere on their career paths in business litigation. To this day, the Commercial Division bench is replete with female judges who serve as role models for other woman in commercial litigation. Indeed, the current female Commercial Division Justices – Judges Nancy Bannon, Margaret Chan, Deborah Chimes, Melissa Crane, Sharon Gianelli, Marguerite Gray, Linda Jamieson, Nicole McGregor-Mundy, Anan Patel, Jennifer Schecter, and Gretchen Walsh – surely will continue to positively impact the Court and business litigation practitioners for many years to come.

For its part, ComFed remains dedicated to supporting the Commercial Division and working to enhance the role of women on the bench and before the Court. In fact, the section's two groundbreaking reports about women attorneys in New York State courtrooms – the 2017 report entitled, "If Not Now, When? Achieving Equity in the Courtroom and in ADR," and the 2020 follow-up report, "The Time Is Now: Achieving Equality for Women Attorneys in the Courtroom and in ADR" – specifically identified efforts by the judiciary, including the Commercial Division, as one of the keys to increasing diversity on bench and in the bar. ComFed's Hon. Judith S. Kaye Commercial Litigation Academy Scholarship, which is bestowed on junior female litigators to cover the cost of the attending the section's Commercial Litigation Academy, is specifically designed to achieve this diversity goal by increasing the number of women prepared to serve as first chair in large commercial cases.

Given all this, it is hard not to feel optimistic about the future of the Commercial Division and women on the Court. With resources as wise and committed as Judges Masley and Emerson, the Commercial Division is sure to continue to lead the way for women in business litigation in New York . . . and ComFed will continue to be there to lend its support.

# My Journey to the Commercial Division, A World Class Business Court

By Justice Elizabeth Emerson (Ret.)

One of the great joys of my professional career is the 21 years that I spent as a Justice of the New York State Supreme Court Commercial Division. The work was challenging and required a great deal of creativity and effort and sometimes extraordinary patience, but the rewards were always beyond measure. It gave me the opportunity to be part of one of the world's best business courts and to work and to collaborate with outstanding practitioners and jurists. Having been there since the early days of the Commercial Division I also had the privilege of working with those such as Justice Judith Kaye and Bob Haig, whose efforts brought the concept to life and provided me with the opportunity to participate in establishing its rules and to shape its practices and to watch it grow and thrive to the point where it is now.

For the first six years of my 28 years on the bench, Suffolk County did not have a commercial division. I had often advocated for the creation of such a court in Suffolk County. I believed that Suffolk County had a thriving business community and the right demographics to support a dedicated business court. I also knew from my years in private practice that to compete Suffolk County needed to join its sister jurisdictions by establishing a sophisticated business-minded court that would use innovative techniques to resolve business disputes. When Justice A. Gail Prudenti became the Administrative Judge for Suffolk County, she clearly saw the need and the benefit, and she asked me to prepare a proposal for the creation of such a court. I will forever be grateful for that assignment. In October of 2002 the Suffolk County Commercial Division was created and I became the first Justice assigned to that Division. The Commercial Division is an extraordinary place to practice, and I believe that it is one of the crown jewels of the New York State Court system. It is an excellent place for young attorneys to learn commercial practice at the highest levels. The Justices, the Commercial Division Advisory Council and the various bar associations, most notably the Commercial and Federal Litigation Section of the New York State Bar Association, are constantly working to provide opportunities and to make it a welcoming and accessible place for all to practice. Certain recent examples include the project "If Not Now When" and the "Taking the Lead" program, both of which I have taken part in, and the many internship opportunities offered by all the Judges within the Division.

A brief summary of my legal career and my path to the bench might help to explain my enthusiasm for the Commercial Division. It is safe to say that my career path took a number of unexpected twists and turns and that I was presented with a number of unexpected opportunities that led me to the work that I really loved. That is why I encourage l all lawyers, especially new lawyers, to keep an open mind when considering the type of practice that you intend to pursue.

I decided that I would become a lawyer around the age of 12. Looking back, I am not sure why. I did not know any lawyers and I knew very little about what they did. I knew so little that I believed that you needed to go to law school in New York if you wanted to practice in New York City (which I did). It was that belief which after graduating from Boston College led me to Syracuse University College of Law. I was indeed fortunate as I received an excellent legal education and interacted with professors who took a personal and genuine interest in my career. At their urging I worked in London with a firm of solicitors and obtained a summer position at the U.S. Attorney's office for the District of Columbia. I also competed as a member of the National Appellate Team and became a teaching assistant for legal writing and research. All of these opportunities were immensely valuable and set me firmly on the path to becoming a litigator.

Upon graduation I accepted an offer to become a first-year associate at White & Case. White & Case was then, and is now, an excellent law firm with practices across many disciplines. At the time first-year associates were required to rotate through three of the main departments. I was so sure that I wanted to be a litigator that I took the unusual step of requesting to be excused from this rotation and to be assigned directly to the litigation department. My request was granted and from that moment I focused exclusively on litigation matters. Due to the high level of the practice, I worked with and learned from some of the best commercial litigators. I did not always realize it, but my assignments gave me the chance to be part of and to work on some truly cutting-edge matters. As the firm's litigation practice started to slow and corporate work began to grow, the corporate group asked that I be reassigned to that department. When advised of this transfer and having no insight into corporate work, I was blissfully unaware of the challenge this would present. Imagine my surprise to find myself as a soon-to-be third-year associate assigned to matters that seemed to have originated in a totally

different world, that spoke a different language, operated by different rules, required different tasks and abided by different customs. Even client relationships and interactions proved to be different. Again, I was fortunate to work with and to learn from some of the best in the business and I soon found that I relished the work.

Eventually my love of the corporate transactional practice caused me to make a significant mid-career switch moving from White & Case to Shearman & Sterling. At that time this was an unusual thing to do as lawyers did not move between firms as they do now. Although White & Case felt like home and I truly enjoyed the work there, I wanted to broaden my experience and focus on a particular type of international finance. At the time the international financial sector was gearing up for the next round of country debt restructuring, principally in Central and South America. Shearman & Sterling had previously represented the Bank Steering Committee established to work with several countries in this region and was set to do so again. Generally, the term bank steering committee referred to a group of the leading global banks and also included the World Bank and the IMF, which would conduct negotiations with the sovereign nations and help shape the structure of the instruments that would be offered to participating institutions as part of the restructuring process. While this would be a comprehensive restructuring of the dollar denominated debt of these developing nations, matters related to important private sector restructurings in these countries were also a part of the overall series of transactions that the parties expected to complete. Finally, this process helped to create a number of innovative environmental projects known at the time as "Debt for Nature" swaps. With this in mind I took the opportunity to move to Shearman & Sterling, and I had the opportunity to work on and to be responsible for parts of many of these extraordinary matters. As country debt and related matters came to a close, I expanded my practice by working on many different deals representing a variety of different domestic and international clients including banks, investment banks, and Fortune 500 companies across different sectors such as entertainment communications, manufacturing and other similar industries. In 1992 I was elected to the partnership of Shearman & Sterling, making me one of the few woman partners of the firm.

My time both as an associate and a partner at Shearman & Sterling was exciting and extremely professionally rewarding. Again, I had the chance to work with some of the best lawyers in the world. The work, particularly the country debt and the merger and acquisition work, was extremely demanding. It required long hours and lots of travel, often on short notice. The concept of remote work or work-life balance did not exist. Email was not really in use and documents had to be physically produced and distributed around the world. Part-time work was not widely available, and it did not exist for partners of the firm whose responsibilities were great. There were still relatively few women particularly on the corporate side either as practitioners or as clients. It was still common to be the only senior woman on a deal and sometimes the only woman in the room. More than once I was asked to make coffee or a photocopy when I was in fact the partner in charge.

It was when I decided to start a family that the difficulty of maintaining a transactional practice and a family life became apparent. It was at this time in my life that my name was put forward for a seat on the New York State Supreme Court. I was indeed fortunate to have been offered this opportunity and I gratefully accepted the nomination to appear on the ballot. This was a contested election, so I was required to embark on a campaign throughout the 10th Judicial District (a district that stretched from Montauk to the border of Queens). I was one of the six candidates elected, and on January 1, 1996, I began my first term as a state Supreme Court Justice. I was 38 at the time, making me one of the youngest Justices and one of the few women on the bench in Suffolk County. Having the opportunity to become a Supreme Court Justice allowed me to continue to practice in an area that I loved but to do so with a degree of control that was at the time not available in the deal world. Again, I will always be grateful for this opportunity.

Although I have enjoyed all aspects of my judicial career, I have truly enjoyed my time in the Commercial Division. As I have written before, this assignment allowed me to use many of the skills that I learned in the corporate world, such as problem solving and creative thinking to resolve issues that arise in litigation. Often when conferencing a case with counsel I advocated for an approach to problem solving that combined the method of negotiation used in the corporate world which expanded possibilities and allowed for creativity with the features of conventional litigation which provided structure and necessary answers to important or threshold questions. Combining these processes often created opportunities that were not possible when simply relying on one or the other. It is this feature of the Commercial Division that sets it apart. I have seen how important it is for New York to maintain its status as one of the great financial capitals of the world. To do so it must have a business court that supports and sustains the financial community. When I taught in an MBA program, I often began my lecture on the judicial system with a quote attributed to Jack Welsh, the well-known former CEO of General Electric, where he stated that you cannot have a strong economy without a strong and independent court system. I agree wholeheartedly with this premise, and I would assert that the Commercial Division more than fills this role. I would encourage young practitioners, particularly women, to explore the many rewarding opportunities to practice in the Commercial Division.

# My Journey to the Commercial Division: A Judge's Reflections

By Justice Andrea Masley

It has been my great fortune to have been blessed with a network of inspirational figures who have guided me and broadened my horizons as a person and as a judge.

I must begin with my mother. An ER nurse in Paterson, New Jersey, my mother treated women injured and dying due to botched abortion procedures. When the Supreme Court ruled in 1973 that abortion was constitutional, she protested against any who would try to abolish women's essential new right. She brought me to demonstrations and made sure that my sisters and I – and anyone else who would listen – understood why the "right to choose" was vital to the health and safety of all women. It was my mother who introduced me to the impact a judge (or seven judges in this case) could make in people's lives, but the thought of a life in law would not come to me until much later.

As a result of majoring in economics at Douglas College, Rutgers University, I was selected for an internship at the Chicago Federal Reserve. There I worked with a Rutgers alumna and Vice President of the Chicago Fed on a report on daylight overdrafts by banks. Upon graduation, naturally, I went to Wall Street, where I worked for a soybean trader and learned how the world is fed. I was also introduced to arbitration, which was standard business practice in grain trading. However, there I was also disabused of the idea that women could be anything they wanted to be. For the first time in my life, I observed equally qualified men and women treated unequally. Since, unlike men, women were required to have credentials before they would be traders, which I thought I might like to be, I returned to Rutgers for an MBA.

During business school, I interned at the New York City Better Business Bureau, which led to a job as the business practices specialist, where I investigated banks, brokerage firms, modeling agencies, rental car agencies, coin dealers and even matchmaking firms (this was long before apps). There I met BBB President, Barbara Opotowsky, and General Counsel Rhonda Singer. They supported my dream of becoming a consumer advocate, but first, they said, I had to go to law school. They contributed to me being the lawyer I became. They encouraged me to join the City Bar Association. Rhonda taught me how to use McKinneys CPLR, including pocket parts,[1] reading all the commentary, finding relevant case summaries, and reading the prior and subsequent statutes to find related context (which is why I still use the books, sometimes). Barbara and I would work together again when she became the Executive Director of the City Bar, where she continued to guide me and my legal career. Rhonda and Barbara continue to support and mentor me to this day.

Because of these two impactful internships, I host interns from high school, college, and law schools every semester, as well as during winter, spring, and summer breaks, with the hope of providing the same opportunities that I had. Former interns have become a rich source for law clerks for me and my colleagues and I learn so much from them.

Upon graduation from Fordham Law in 1991, I joined Dechert's litigation department, where the importance of having Fordham in my life was immediately made clear to me. A Fordham alumnus, James Tolan, put me on his litigation team. Jim was my ally, making opportunities on cases for me. I worked with Jim on his major cases, and on the minor cases that he took so junior associates could get experience. Among the many things I learned from him was how to take a deposition. Jim had been Judge Kaye's law partner at Olwine Connelly Chase O'Donnell & Weyher so I also learned a lot about Judge Kaye, the founder of the Commercial Division, as a commercial litigator. Jim continued to support me after I left the firm, and even chaired my fundraising committees when I ran for election to Civil Court in 2006 and 2007.

Though I was a member of the City Bar Association since 1991, I became counsel to Executive Director Fern Schair in 1995. Fern demonstrated how those who worked behind the scenes could change the legal profession and create opportunities for women and minorities. One of Fern's most impactful rules was that a City Bar program could not proceed unless its panel of speakers was diverse. When Fern worked with Hon. Betty Ellerin in Betty's capacity as chair of the New York State Judicial Committee on Women in the Courts, I watched two brilliant strategists make the courts better for all of us: for example, improving translation services and establishing a network of gender fairness committees throughout all courts.

With Barbara Robinson as the first female president of the 125-year-old City Bar Association, my position evolved to Diversity Counsel. I worked with all the diversity committees on the various ways they make change. I was particularly influenced by Hon. Roz Richter, who co-chaired the LGBT Committee, which was drafting LGBT HR policies for law firms and legal departments. Roz and I would work together again on the Women in the Courts Committee when she, as chair, invited me to be the vice chair. We urged OCA to count the number of women, minority, and LGBTQ lawyers who registered to practice law in New York to help organizations like the Association provide meaningful programs and services. Later, Roz and her late wife Janet Weinberg encouraged me to become a judge and educated me on judicial politics. Roz continues to be a trusted advisor to me.

At this time, I also met Justice Charles Edward Ramos, then a member of the Association's Board of Directors. He brought me into the Court's Law Department. My job included drafting decisions for Justices Ramos, Ira Gammerman, and Louise Gruner Gans, among others. I then became a law clerk for Judge Gans, whose meticulous reading of motion papers and case files set an example I follow to this day. I also had the good fortune to work with Marilyn Dershowitz, then a law clerk and later a Special Referee, who shared her years of wisdom and decision-writing secrets with me.

It was two of Justice Gans's decisions in public housing cases that triggered my decision to become a judge. Simply put, I wanted the opportunity to make the kinds of decisions that impacted public policy and peoples' lives.

As Judge Gans was approaching retirement, I became a law clerk for Judge Ramos in the Commercial Division. Together we worked on an eclectic array of cases, which is how I was introduced to many of the members of NYSBA's Commercial and Federal Litigation Section who practice in the Commercial Division. Indeed, initially, former Section Chair Tracee Davis and I were co-clerks (and now lifelong friends). The issues we addressed in decisions were wide-ranging and, in one case, harkened back to my BBB days, commenting on legislation which would protect models from abuse by modeling agencies. Judge Ramos and I did disagree about one thing that I can now disclose – rendering decisions from the bench on the record. I was wrong, and he was right; they are absolutely necessary. I dare say it was Judge Ramos who made me the judge I am today by example and with this simple advice that I think about daily: just follow the law and do what you think is right. He is also responsible for introducing me to Victoria Corbo, now my principal law clerk, whose first job out of law school was as a participant in OCA's fellowship program, which eventually became our current Commercial Division law clerk program.

At this time, I was appointed chair of the City Bar's State Courts of Superior Jurisdiction Committee. The Committee issued the initial confidentiality agreement now used in the Commercial Division statewide. We also issued reports on en banc review[2] and e-discovery.[3] Triggered by my frustration with how little attorneys understood about where judges come from, the Committee drafted a report to help lawyers and the public better understand and get involved in the judicial selection process.[4]

Next, I joined the Council on Judicial Administration (CJA). In response to the careless publication of a litigant's children's addresses and health records in a notorious case before Justice Ramos, the CJA drafted a redaction rule and report that eventually became Uniform Rules for Trial Courts § 202.5(e). I also chaired a CJA subcommittee that issued a report explaining why the 1846 constitutional cap on the number of Supreme Court justices must be lifted to finally address the shortage of judges caused by the cap to all courts, not just the Supreme Court. But lifting the cap is not sufficient; we recommend a weighted caseload average to calculate the number of judges needed in every court in the state, as is done in 34 other states and the federal courts. Our report, "Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, Evidence Based Method of Assessing New York Judicial Needs," was published in September 2023 and quickly endorsed by both NYSBA's Commercial and Federal Litigation Section and NYCLA, among others, for which I am eternally grateful.

I had also volunteered on political campaigns since college and worked day and night on Karen Burstein's 1994 campaign for New York State Attorney General. A friend from the City Bar's Consumer Affairs Committee introduced me to my neighborhood political club, where I helped to collect signatures for political and judicial candidates and volunteered on presidential campaigns in other states. These experiences were invaluable when I decided to run for election as judge.

In 2007, I was elected to the Civil Court of the City of New York, 9th Judicial District, and in 2016 to the Supreme Court, New York County. In addition to assignments in Family and Civil Courts and a guardianship part, I sat in criminal arraignments on weekends and holidays, all of which very much informed my passion for contributing to the "Repeal the Cap & Do the Math" report, because I witnessed the impact of the shortage of judges on the recently arrested held longer than necessary, families waiting for custody and visitation orders, and incapacitated people in need of immediate help.

When I graduated from Fordham, I never expected to land in the Commercial Division. But given my business background, perhaps it was fated. I was assigned to the Com-

mercial Division in June 2017, when Hon. Jeffrey Oing was appointed to the Appellate Division, First Department. I was impressed by his case management, well organized oral decisions on the record, and thoughtful decisions, and I strive to emulate his approach. My appointment was such a momentous event in my life that I still have Hon. George Silver's voicemail from that day.

While it is an absolute joy to work with the greatest lawyers on the most complex and interesting cases in the world, it is also a huge responsibility to efficiently manage more than 350 cases and ensure that the Commercial Division's stellar national and international reputation continues to attract these lawyers and cases to New York. I do so on the shoulders of all of those mentioned above and many others, and the assistance of three brilliant law clerks, the invaluable resource of my colleagues, and very understanding friends and family and especially my supportive husband, Dr. Samuel D. Albert.

**Endnotes**

1. Ask a partner about pocket parts.
2. Committee on the State Courts of Superior Jurisdiction, En Banc Review in New York Courts, https://www.nycbar.org/wp-content/uploads/2023/05/En_Banc_Article.pdf.
3. Joint Committee on Electronic Discovery, Association of the Bar of the City of New York, Explosion of Electronic Discovery in All Areas of Litigation Necessitates Changes in CPLR, August 2009, https://www.nycbar.org/wp-content/uploads/2023/05/20071732-ExplosionofElectronicDiscovery.pdf.
4. Judicial Selection Methods in the State of New York: A Guide to Understanding and Getting Involved in the Selection Process, March 2014, https://www.nycbar.org/wp-content/uploads/2023/05/20072672-GuidetoJudicialSelectionMethodsinNewYork.pdf

# You Die . . . Does Your Business?

By Maryann C. Stallone and Amanda M. Leone

Succession planning is a critical yet often overlooked aspect of long-term strategic planning for any business. As businesses grow and evolve, the need to ensure a smooth transition, a "passing of the baton," or, in some instances, a blueprint to wind up the business's affairs becomes increasingly important. This is especially true for closely held companies, family-owned businesses, and partnerships. Succession planning goes beyond simply identifying a successor or adopting a strategy to wrap up the business – it requires a comprehensive approach to preserving the company's legacy, maintaining its financial stability, and protecting the interests of all stakeholders, including employees, customers, partners, and surviving members of a deceased partner's family who may have some beneficial interest at stake.

Best practices dictate that every business, whether a partnership, limited liability company (LLC), or corporation, should have a written plan in place that addresses what happens to the business if a key member or partner passes away. But what happens if there is no such written plan? If you are a business owner and you die . . . does the business also "die"?

In this article we provide an overview of the potential outcomes and consequences in failing to plan for the succession of a business for a partnership, LLC, closely held corporation, or sole proprietorship in the event of the death of a partner, member, stockholder or owner.

## General Partnerships

In New York, the dissolution of a partnership upon the death of a partner is governed by a well-established principle in partnership law. The default rule, as articulated by § 62(4) of the Partnership Law, is that a partnership is dissolved when a partner passes away, unless there is an existing partnership agreement that explicitly stipulates otherwise. This rule reflects the underlying nature of partnerships as personal relationships based on mutual trust and cooperation, which are inherently altered by the death of any one partner.

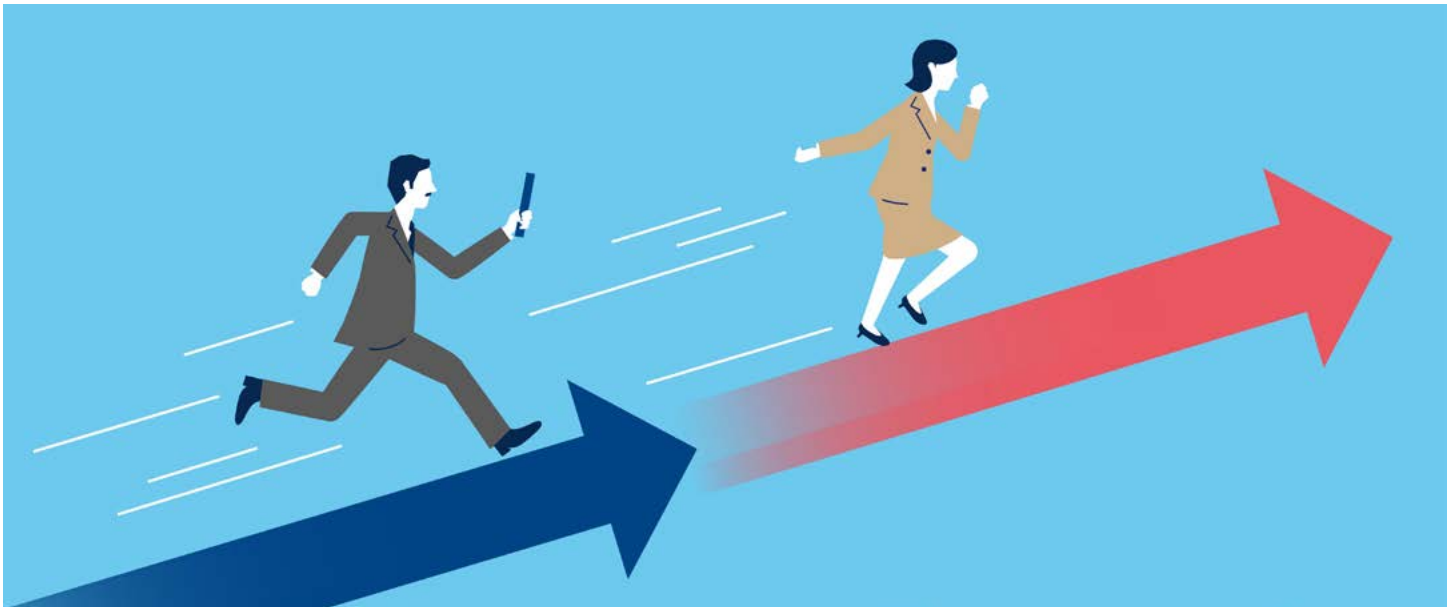
In the absence of a partnership agreement that provides for the continuation of the business, New York law imposes a clear duty on the surviving partners to take immediate and responsible action to settle the partnership's affairs. This process involves a number of critical steps: finalizing any outstanding business transactions initiated prior to the partner's death, collecting any debts owed to the partnership, settling the partnership's obligations to creditors, and ensuring that the decedent partner's share of the partnership's assets is properly calculated and distributed to their estate or legal representative.

While the partnership is considered dissolved upon the death of a partner, without an agreement to the contrary, this does not mean that the partnership's business activities must cease immediately. Rather, the partnership continues to exist for a reasonable period of time following dissolution, but solely for the purpose of winding up its affairs. This continuation allows the surviving partners to complete the necessary tasks associated with closing out the partnership's business. These tasks may include the liquidation of partnership assets, payment of the partnership's remaining debts and obligations, and the distribution of any residual assets among the surviving partners and the estate of the deceased partner.

The process of winding up is crucial not only for the proper closure of the business but also for ensuring that the rights and interests of all parties, including the surviving partners, creditors, and the estate of the deceased partner, are protected and respected. The reasonable period during which the partnership continues after dissolution is flexible, accommodating the complexity and nature of the partnership's business, as well as the time required to fairly and efficiently complete the winding-up process. Thus, the New York legal framework provides both structure and flexibility to address the often-delicate circumstances that arise when a partner passes away, ensuring that the transition is handled with legal and financial propriety.

## Limited Partnerships

If the deceased partner was a limited partner, N.Y. Partnership Law § 110 outlines the rights and responsibilities of the remaining partners in the absence of a written agreement. Under the statute, the executor or administrator of the deceased limited partner's estate inherits the rights of the deceased for the purpose of settling the deceased's estate. These rights include managing the deceased partner's interests in the partnership, particularly in situations where the estate's involvement is necessary to ensure the orderly transition or disposition of assets and obligations. In many cases, this includes the authority to designate an assignee as a substituted limited partner, which effectively transfers the deceased partner's interest to another individual or entity, unless a partnership agreement expressly prohibits or restricts such a substitution. Notably, the estate of the deceased limited partner also remains responsible for any financial liabilities or obligations



that the deceased partner incurred during their lifetime, ensuring that the partnership and its creditors are not left in a bind.

The continuation of a limited partnership following the death of one of the partners is a nuanced issue, much like in a general partnership. A limited partnership can extend beyond the death of a partner if there is a partnership agreement in place that specifically allows for such continuity. These agreements often contain clauses addressing potential contingencies like the death, disability, or withdrawal of a partner. This sort of preemptive succession planning is crucial because it ensures that the partnership can continue operating smoothly without the need for dissolution or court intervention, which could otherwise disrupt operations and lead to significant and unintended financial consequences.

However, even in the absence of a written partnership agreement, under New York common law, the partnership may still be able to continue through the conduct of the surviving partners. The partners' conduct also may override a dissolution clause in a written partnership agreement. For example, in *Poole v. West 111th Street Rehab Associates*, the surviving limited partners chose to continue business operations after the death of the general partner, thereby waiving the dissolution provision originally included in the partnership agreement. 121 A.D.3d 571 (1st Dep't 2014). The *Poole* case demonstrates that the surviving partners' decision to carry on the business may be seen as an implicit agreement to override the dissolution clause and allow the partnership to continue based on the surviving partners' conduct. Therefore, while New York Partnership Law provides a clear default framework for dissolution in the event of a partner's death, the actual outcome depends heavily on the specifics of the partnership agreement and the actions of the surviving partners. However, best practice is for the limited partners to have an agreement carefully drafted to specifically address succession planning in the event of death, disability, withdrawal, as well as other business divorce circumstances.

## LLCs and Corporations

The above analysis changes if the entity is an LLC or a closely held corporation. For New York LLCs, if there is no operating agreement in place to address dissolution upon the death of a member, the surviving members of the LLC will generally be permitted to continue the business following a member's death, but the interests of the deceased member may need to go through a valuation process to determine the appropriate payout for the decedent's estate and/or beneficiaries. *See* LLC Law § 701(b). If no operating agreement is in place and no members of the LLC remain, the LLC may be dissolved. LLC Law § 608 controls a deceased member's interest, and gives the estate representative limited powers to "exercise all of the member's rights for the purpose of settling his or her estate . . . including any power under the operating agreement of an assignee to become a member."

Closely held corporations follow a similar process, whereby the shares held by the deceased will generally transfer in accordance with the decedent's will, or, in the absence thereof, intestacy laws. Alternatively, there could be a buy-sell agreement in place that requires the corporation or other shareholders to buy the deceased's shares.

## Sole Proprietorships

A sole proprietorship is a business structure where the business is owned and operated by a single individual and where the owner is personally responsible for all liabilities and debts incurred by the business. Generally, upon the death of the owner of a sole proprietorship, the business does not continue as it would with other business structures like corpora-

tions or partnerships; it would cease to exist since the business cannot operate without its owner.

However, § 2108 of the Surrogate's Court Procedure Act (SCPA) provides a legal framework under which a fiduciary – such as an executor – may petition the court for permission to continue a sole proprietorship upon the death of the sole proprietor if it is in the best interests of the estate and the estate's beneficiaries. Whether permission to continue the business is granted is within the Surrogate's Court's sole discretion and determined on an *ad hoc* basis. While generally an executor has the right to continue a sole proprietorship only if the decedent's will authorizes it, if the estate's beneficiaries consent to the executor's continuation of the business without express authorization in the decedent's will, some courts will allow it. But again, it is imperative that the fiduciary and/or the beneficiaries make a strong case that continuing the business is in everyone's best interests.

For example, in *Matter of Hammond*, the Appellate Division highlighted that the consent of the beneficiaries to continue the business is often a question of fact. 124 A.D.3d 171, 172–73 (3rd Dep't 2014). Consent of the beneficiaries may be deemed to be equivalent "to the authorization by a testator in his [or her] will for the purpose of fixing responsibility for debts subsequently incurred." *Id.* at 173. However, if the business continues and incurs losses, an issue that needs to be deliberated is whether the losses incurred are a result of continuing the decedent's business and whether the *individuals* doing so are liable for the losses. *See id.* In other words, a fiduciary that petitions the court for authorization to continue a business in the wake of a sole proprietor's death should be prepared to accept all responsibility – the good and the bad – that may come with that decision.

Procedurally, a petition is filed by the estate's fiduciary for judicial approval for the continuation of the business. The business must be liquidated absent permission from the decedent-testator – i.e., a written directive in a will or other written agreement – or judicial approval. The petition must convince the Surrogate's Court that continuation of the business is more beneficial for the estate than liquidating it. The Surrogate's Court will consider factors such as the potential profitability of continuing the business and its financial ability to satisfy any outstanding creditor claims as part of its analysis.

While succession planning is vital for any business, it is particularly important for sole proprietorships. Having a well-crafted succession plan in place and choosing a designated successor – whether a family member, trusted employee, or outside buyer – can help mitigate disruptions and ensure that the business continues to operate smoothly without major interruptions, including the continuity of client relationships and employee stability.

## Conclusion

The fate of a business following the death of a key member – whether a partner, limited partner, shareholder or sole proprietor – largely hinges on the existence and clarity of the succession planning mechanisms in place prior to that person's death. New York law provides a default framework for each business structure, dictating what happens in the absence of explicit agreements or continued actions by surviving members of the business entity. For partnerships, both general and limited, the absence of a comprehensive partnership agreement generally leads to dissolution, but the specific circumstances and conduct of surviving partners can sometimes override this default. For LLCs and closely held corporations, operating agreements and buy-sell agreements put in place pre-death play a crucial role in determining the continuation or wind-up of the business, with the valuation of the deceased member's interests being a critical factor. Sole proprietorships face the greatest risk of dissolution, with the continuation of the business being subject largely to judicial discretion and the proactive efforts of the estate's fiduciary.

Ultimately, while New York's statutory and common law frameworks provide guidance, they also underscore the importance of proactive succession planning. Without a clear and detailed plan, businesses face uncertainty, potential disputes among surviving partners or heirs, and the risk of significant financial loss and contentious litigation. Business owners therefore should prioritize succession planning to ensure that they not only protect their legacy but also provide stability and security for all stakeholders involved. Thoughtful planning is essential to prevent the premature "death" of a business following the loss of its key members.

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The authors are thankful for the assistance of THSH Associate Lillianna Iorfino and Legal Intern Amy Kong in preparing this article.

# The Unique Skills of the Appellate Litigator

By Seth M. Rokosky

Early in their careers, many litigators learn to gather and prove "facts," acquiring invaluable experience in a broad array of cases. They draft complaints, review documents, take depositions, and more. As they become increasingly seasoned, they see how each task is critical to reaching a favorable resolution and, if necessary, to prevailing at trial. The very best of these lawyers eventually master the art of "trial advocacy" and become rightly prized for their ability to steer cases from beginning to end before a judge or jury.

There is, however, a "fundamental difference between trial advocacy and appellate advocacy."[1] Trial lawyers typically work within existing legal precepts to persuade the finder of fact to accept their client's version of events. Consummate trial lawyers ascertain the factual strengths and weaknesses of their cases; sift, evaluate, and select the evidence; and then work tirelessly to develop a compelling factual narrative. From "an amorphous mass of testimony and exhibits," they create "an aura of righteousness" around their client and cause.[2]

Trial attorneys strive to become more than mere "litigators" – they aim to "try cases" and work to sharpen their grit and storytelling abilities so they can become the "next generation of Clarence Darrows and Gerry Spences" and persuade others that credibility and the evidence are on their side.[3] The "psychology of persuasion" is "what fascinates true trial lawyers, and they spend a lifetime learning about, and learning how to apply, psychology in the courtroom."[4] So it is in the trial courtroom where these "great stars of the legal galaxy shine."[5] When they daydream, they are Gregory Peck delivering a jury summation in *To Kill a Mockingbird*, or Tom Cruise cross-examining Jack Nicholson in *A Few Good Men*.

By contrast, appellate lawyers deal primarily with the law. Arguments are typically before a panel of three or more highly experienced jurists who are interested in reviewing and analyzing every pertinent authority. Appellate judges generally defer to factual findings and consider only facts in the record. So appellate lawyers generally take the record as given and work tirelessly to persuade others to adopt their preferred interpretation of the law.

The skills and knowledge needed for effective appellate advocacy "are not always found – indeed, perhaps, are rarely found – in good trial lawyers."[6] True appellate lawyers become immersed in legal doctrine so they can become the next Walter Jones or Daniel Webster and shape legal principles through discourse and the academic exercises of legal research, analysis, and writing. They stay apprised of legal milestones, master the rules and preferences of appellate courts, and take the perspective of a legal generalist who comes new to a case, just as the judges and their clerks will be on appeal.[7] When they daydream, they are Abe Fortas delivering oral arguments in *Gideon's Trumpet*, or John Quincy Adams speaking to the Supreme Court in *Amistad*.

Recognizing these differences, judges are "emphatic that appellate litigation is a specialized field."[8] They report that specialized practitioners consistently do excellent work in appellate courts, while trial lawyers doing their own appeals often do not.[9] Judges note that those "who are frequently working at the appellate level understand" what constitutes good brief writing; where they see mistakes "are from trial lawyers who only do an appellate brief once in a great while."[10] The "consensus" among many judges is "that lawyers who regularly appear in appellate courts generally make better oral advocates" in appellate courts.[11] As one ABA Committee explained in 1984, "[a]ppellate litigation should be recognized . . . as a discrete and important area of litigation requiring knowledge and skills different than trial litigation."[12] Appellate advocacy is, as one D.C. Circuit judge put it, a "specialty all to itself."[13]

New York is starting to notice. "Historically, many lawyers, including litigators, were generalists – able to handle any matter that came their way. Over the past few decades, however, there has been a trend in the profession toward specialization. . . . Appellate lawyers have been part of this trend."[14] In recent years, we have seen blogs and academic clinics devoted to New York appellate practice;[15] the continued development of the New York State Solicitor General's Office – now led by Barbara Underwood, a former acting U.S. Solicitor General – into perhaps the nation's preeminent state appellate office; and the appointment of Judge Caitlin Halligan, the former New York Solicitor General, to the New York Court of Appeals bench. Yet there is still much work to do in this state.

To be sure, trial lawyers can be integral to success in an appeal. Their intimate familiarity with the case and record may be enormously valuable in an appellate court. By the same token, appellate lawyers can add great value in trial courts, analyzing claims and defenses, drafting motions and briefs, and preserving issues for appeal. Some law firms brand

themselves as trial boutiques; others have dedicated practice groups for appeals. Still other law firms and lawyers continue to consider themselves to be general practitioners, equally equipped to meet the demands of any case. But even "[t]hose lawyers who perform as both trial and appellate advocates must learn to adjust their techniques to match the demands of each court."[16]

The New York State Bar Association includes entire sections devoted to antitrust law, employment law, tort law, and more. It also includes a Trial Lawyers Section, with bylaws stating that the section is devoted to the trial lawyer and the law relating to trial practice and procedure. But appellate lawyers too have specialized skills. And "clients have increasingly made the business decision that the expense of hiring specialized appellate litigators is worthwhile given the increased burdens and risks of modern civil litigation."[17] Especially in complex commercial cases, sophisticated clients understand that "specialization leads to reduced expense, realistic evaluation, and the potential for better results."[18]

Litigators of all stripes should understand, and account for, the fundamental differences between trial advocacy and appellate advocacy. A trial is nothing like an appeal, which requires unique skills that must be honed through hard work and cultivated through dedicated experience. By recognizing these differences, litigators and their firms can grow in their ability to advocate in appellate courts and ensure that they will be best placed to meet the needs of their clients.

## Brief Writing

The most fundamental difference between trial and appellate advocacy involves brief writing. When lawyers are in trial court, they make numerous written motions and other submissions on a wide variety of issues, often with short deadlines of mere weeks or even days. As a result, lawyers in trial court typically concentrate on making and preserving all plausible arguments within the time allotted, expecting to focus and expand upon their most forceful and compelling points when speaking to a judge or jury at a lengthy hearing or trial.

Just as trial advocacy "requires oral persuasion," however, "appellate advocacy requires written persuasion" in its most critical stages.[19] Those who practice regularly in appellate courts know from experience that "the very heart of successful appellate advocacy is superb brief writing."[20] "Appellate judges across the country maintain that an ability to write clearly has become the most important prerequisite for an appellate lawyer."[21]

Appellate lawyers, unlike trial lawyers, typically have only one or two briefs to make all of their points. And as oral argument time "is increasingly whittled away, the significance of [each] brief becomes even more apparent."[22] Oral arguments in an appellate court last mere minutes (if they are held at all), and a single brief or two may be the only chance to persuade the judges. In the United States Court of Appeals for the Second Circuit, for example, parties typically receive about 10 minutes per side. In the New York Court of Appeals, parties can get up to 30 minutes, but typically receive far fewer than that. And in the Appellate Division, parties generally receive no more than 15 minutes, with attorneys in the First and Second Departments expected to limit themselves to fewer minutes whenever possible – a practice that itself can raise strategic and tactical considerations for an appellate advocate weighing the importance of the briefs.

Appellate litigators must exercise "discretion and objective detachment in deciding which . . . issues will be raised on appeal."[23] Accounting for the merits and the applicable standard of review, issues that consumed trial counsel may be of marginal significance; issues that seemed trivial during trial may become critical on appeal. Judges have stressed that lead trial counsel oftentimes do "not have enough time or enough experience to know what issues to lay out correctly" and, having contested every inch in the trial court, are "often unable to discern the appellate forest from the trial trees."[24] An appellate practitioner who understands which points are most likely to persuade appellate judges is well placed to navigate that process effectively.

Moreover, appellate litigators are keenly aware, from judicial clerkships and other relevant experience, what sort of writing has proven to be most effective in appellate courts. An appellate brief must be cogent, informative, honest, and convincing. Its drafting requires a delicate balance of accuracy and persuasion. "Writing a statement of facts that is necessarily neutral in form but persuasive in effect takes considerable skill; it is a delicate, and difficult, task for even the most experienced brief writer."[25] Appellate counsel must otherwise carefully prune legal theories, choose words precisely, cite cases thoroughly, and edit and revise repeatedly.

Veterans understand that excellent appellate briefs do not merely happen; they are the "product of painstaking craftsmanship," and counsel's "utmost care and thoughtfulness" must be devoted to every brief.[26] Many advocates and judges consider appellate brief writing to be a form of art. The process has been compared to "that of a sculptor, who starts with a lump of claim and continuously kneads it, prods it, and shapes it until eventually becomes – we hope – a thing of beauty that conveys something powerful to the viewer."[27]

After all, appellate judges largely read briefs for a living and are professional legal writers. In 2023, the Appellate Division alone ruled on the merits of nearly 6,000 appeals and resolved more than 21,000 motions after examining countless briefs, legal memoranda, and judicial opinions. Appellate

judges rightly expect those who appear in their court to devote themselves to good writing in the thousands of briefs the judges must read each year. As the Honorable Fred I. Parker, a former judge on the United States Court of Appeals for the Second Circuit, explained:

> If I read an appellant's brief which, clearly and accurately, sets out the facts, tells me what the district court did, explains why the district court found in appellee's favor and then goes on to explain why that decision was in error, I get engaged in a case and stay with that brief. Such a brief is a joy to read because it allows me to understand the entire case without wasting any time. If the brief has also made me think that the equities or the law suggest reversal, then it has been truly successful.[28]

By the same token, appellate litigators know the harm that can result from a brief that is poorly drafted. They know appellate judges can quickly spot distortion and obfuscation. They know a storm of arguments can signal a lack of merit. They know judges quickly lose "confidence in the substance if the writing is bad."[29] They emphasize brevity, seek simplicity, and eliminate hyperbole. They focus not simply on errors by the trial court, but on significant errors that an appellate court may conclude warrant providing some relief.

Finally, appellate counsel may be involved in drafting or coordinating amicus briefs, which are commonly regarded as helpful in appellate courts. Ideally, counsel for a party and counsel for amici will coordinate to present a united front, and that requires initial engagement of amici, discussion of potential arguments, mastery of applicable rules and procedure, and preparation of a compelling brief sufficiently in advance of argument for the court to consider the brief.[30] An excellent amicus brief goes beyond the arguments made by the parties to explain broader implications or practical effects of a particular ruling. The New York Court of Appeals recently made this process more difficult by significantly shortening the deadlines for filing amicus briefs, making experience and skill all the more important when seeking to submit briefs to the Court.

All litigators should take the time to develop and refine their writing skills. Most excellent writers become successful by working to master basic writing principles, analyzing the distinguished work of others, and holding themselves to the highest standard of excellence on every brief they write. Just as an examination of a witness can be done hastily, a brief can be drafted in a matter of days. But it can take years of persistence to devote oneself to that craft.

## Oral Argument

Many of the same considerations that apply to brief writing apply to oral argument. In a trial court, advocates may deliver arguments on a variety of motions or other issues over an extended period, sometimes up to several hours per day. Those contentions may focus on the parties' factual and legal contentions, working methodically through each issue, with a typically busy judge permitting the parties to fill in any gaps of understanding with details about the case. Counsel become intimately familiar with the preferences and personality of their assigned judge, who works directly with the attorneys to move the case from complaint to final judgment.

These aspects of advocacy in a trial court eventually become heightened if the case reaches trial. The parties may expend considerable time and effort conducting analyses of prospective jurors from their community. "[M]ost jurors are affective decision makers," meaning they are "emotional and creative, and are more interested in people than problems. They see trials as human dramas, not legal disputes."[31] By contrast, most lawyers are cognitive decisionmakers, trained in legal reasoning and using logic to resolve disputes. Thus, lawyers who understand and meet the jurors' emotional needs will have an advantage. They work hard to build their own credibility while branding their adversaries as outrageous. In a bench trial, the judge's accumulated perceptions of the advocates, clients, and governing law become paramount.

Experienced trial lawyers deliver carefully crafted, sometimes lengthy opening and closing arguments and systematically seek to prove their contentions through a compelling presentation of evidence. They take care to rebut arguments and evidence presented by the other side. The judge and jury (and sometimes a viewing public) watch and listen, rarely interrupting, leaving counsel to direct the ebb and flow of events. A trial becomes a form of legal performance, designed to lead the factfinder to a conclusion based on a disputed evidentiary record. Many people recall Johnnie Cochran quipping that if the glove "doesn't fit, you must acquit," but he made those closing remarks after nearly eight months of the jury silently observing the O.J. Simpson trial.

Oral argument in an appellate court is entirely different from a trial presentation to a judge or jury. A few minutes of oral argument may be the only occasion on which counsel can speak directly with the appellate judges to understand and address their concerns. "A competent appellate advocate will . . . regard oral argument as a conversation with the court in what is, in effect, a beginning of its conference" about how the court will resolve the entire appeal.[32] "Opposing counsel" are simply "a necessary evil in this process, to be treated fairly and courteously and otherwise ignored."[33] Furthermore, appellate advocates are faced with at least three judges simultaneously asking questions from the bench. An appellate argu-

ment can be as much of a conversation *among* judges as a back-and-forth with the advocates, and questions can range from softballs and lifelines to spears directed at the heart of an advocate's case, so it can be difficult to determine the motivations behind each question and how to address them.

The tenor of appellate argument also is entirely different from presentations in a trial court. "Appellate arguments are generally more low-key and cerebral, and the frequent tendency of effective trial lawyers to want to dominate the courtroom or appeal to the emotions of the listeners (witnesses, jurors, and spectators) can backfire in the context of an appellate argument."[34] The courtroom can often be empty, except for listeners who are familiar with the legal arguments in the parties' briefs. The best tone is one of respect, honesty, knowledge, and assistance, in which the advocate strives to educate the court in a calm and dignified manner.

Arguments that work with a jury or trial judge may antagonize appellate judges. Unlike in a trial court, where argument may focus on hotly contested points about the case, oral argument before an appellate court is likely to focus on how affirmance or reversal, on minimal or more sweeping grounds, would impact other or future cases. This is usually explored through an agreement about facts and the posing of hypotheticals to test application of a legal principle to different scenarios. Appellate judges typically have studied and absorbed the briefs, and one may risk annoying them by belaboring a recitation of facts or issues. The New York Court of Appeals, for example, expressly directs counsel in its rules to presume the Court's familiarity with the facts, procedural history and legal issues the appeal presents. And judges in the First and Second Departments commonly begin oral arguments with admonishments to counsel to the same effect.

Furthermore, unlike in a trial court, where advocates may spend days or weeks meticulously presenting their case, appellate practitioners have only minutes to deliver their entire argument and cannot make use of demonstratives or a fully scripted presentation. Instead, they must advance their presentation by responding to the court's questions, no matter how far they may range, while maintaining a coherent position that boils down the case to its essence and weaves in both precedent and policy. At the same time, they must be ready for a cold bench with a short presentation that walks through the key points. Meeting these demands "requires a set of skills wholly distinct from those valuable in cross-examining witnesses at trial or making a closing argument to a jury."[35] The advocate must be able to address legal issues cooly without reference to irrelevant facts. He must be able to advance principal points while simultaneously being peppered with questions, all with an eye toward placing policy implications in their broader legal context.

Doing so requires extensive preparation. The advocate must conduct a thorough review of the briefs and record, master the relevant case law, and develop an argument that focuses on the crux of the case. He must be ready for the arguments of opposing counsel but also prepare for any other potential lines of inquiry that may arise on any topic. Moot arguments are particularly critical in an appeal because they provide not only an opportunity to become comfortable with multiple questioners but also to test what works. At a moot, colleagues and other experienced practitioners (often appellate lawyers enlisted for specific reasons) can pepper the advocate with hundreds of questions on virtually any issue, probing for potential weaknesses or endeavoring to provide an honest assessment of the advocate's likely reception in an appellate court.

## Appellate Counseling and Motion Practice

The work of an appellate advocate can be critical in numerous other ways throughout the life of an appeal. Those skills are similarly developed and honed through experience, and they can have real-world impacts even as proceedings continue in the trial court.

One of the most important functions of an appellate lawyer is to provide an independent perspective on the relative merits of an appeal. The decision whether to appeal "is perhaps the most important decision made during the course of an appeal," but it "may well be the stage of the appellate process where advocates most often err."[36] Because trial counsel may develop strong views and potential blind spots after hotly contesting every inch of the case, counsel who focus on a potential appeal may be best positioned to provide objective analyses of the prospects for success and likely duration and expense of continuing to pursue the matter in a higher court.

In some cases, the most challenging issues concern whether the appellant has a right to be in an appellate court at all. The law of appellate procedure in both federal and state court is filled with traps for the unwary, and the consequences of a misstep can be enormous. For example, federal courts of appeals have jurisdiction from all final decisions of the district courts, but the meaning of "final" is not always clear, and the law provides considerable nuance and exceptions. Parties generally can appeal as of right any interlocutory order to the Appellate Division, but only a final order to the New York Court of Appeals, and there is no airtight conception of what constitutes a "final" order. On the other hand, counsel in New York courts must consider whether to appeal nonfinal orders as well because they are brought up for review by the final judgment only when they "necessarily affect" the judgment, and counsel must be sure to perfect any such appeal before entry of judgment, which would terminate the appeal as a matter of law.

Aside from jurisdiction, appellate litigators regularly encounter a host of complex issues relating to arcane issues in appellate procedure. Questions can arise, for example, regarding when the time to appeal begins to run, whether that time is tolled by one or more post-judgment motions, whether counsel can or should file a cross-appeal, and the adequacy of appeal papers. "Just as a litigator must know the basic steps in trial procedure from the filing of the complaint through posttrial and post-judgment motions, including personal and subject matter jurisdiction and venue, so also must the litigator be familiar with statutes, rules of procedure, and judicial doctrines that govern what and when a litigator must do to represent a client effectively in the appellate process."[37] The answers to these questions often cannot be found in the applicable rules or reported decisions. Although a diligent litigator can attempt to research them when they arise, there is no substitute for the wisdom that comes from grappling with them on a regular basis.

Counsel must also consider myriad practical factors when advising clients about a prospective appeal, including the possibility of success, the appeal's likely duration, the value of the remedy, and any financial or other costs involved. Thoroughly evaluating these factors requires understanding not only the applicable rules, but also how cases actually get litigated in appellate courts and how courts go about correcting errors or not. When considering whether to appeal, one of counsel's most valuable talents is the ability to see when an appeal has little chance of success, and to break this news to the client. This "requires a cool head, a command of the issues and the applicable standard of review, and a great deal of courage."[38]

Even beyond taking, briefing, and arguing appeals, appellate litigators work to develop the skills necessary to prevail for their clients, just as trial lawyers do outside of trials. For example, appellate practitioners may be required to file one or more motions during the course of an appeal. Unlike motions in a trial court, appellate motions tend to be procedural rather than substantive. Typical motions seek an extension of time, leave to file an overlength brief, or permission to supplement the record. These motions can have a material impact on the substance of a brief or oral argument and can therefore directly affect an appeal's outcome.

Some appellate motions can be substantive and of vast importance for clients, such as a motion to stay trial proceedings or enforcement of the order challenged on appeal. Navigating these processes requires familiarity with local customs and practices and, typically, briefing on an expedited basis. Furthermore, such motions are often decided without oral argument and at least in part by an official in the clerk's office, rather than a judge, making familiarity with the clerk's office and that experience extremely valuable when litigating such applications for clients.

## Conclusion

Effective appellate advocacy is more than simply reading cases, writing briefs, and answering questions. It takes far more to persuade a panel of distinguished judges to rule in a particular way that will shape the governing law. Litigators should recognize and seek to develop the special experience and skills that are required to master the art of appellate advocacy. In doing so, they will grow as attorneys and be able to provide the best possible service for their clients.

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### Endnotes

1. Hon. Ruggero J. Aldisert, *The Appellate Bar: Professional Responsibility and Professional Competence – A View from the Jaundiced Eye of One Appellate Judge*, 446 Cap. U. L. Rev. 445, 447 (1982).
2. *Id.*
3. *See, e.g.,* Hon. Mark W. Bennett, *Eight Traits of Great Trial Lawyers: A Federal Judge's View on How to Shed the Moniker 'I Am a Litigator,'* 33 Rev. Litig. 1, 3, 44 (2014).
4. Thomas A. Mauet, Trial Techniques and Trials 2 (Wolters Kluwer 10th ed. 2017).
5. Hon. Aldisert, *supra* note 1, at 447.
6. Hon. Laurence H. Silberman, *Plain Talk on Appellate Advocacy*, 3 App. Advoc. 3, 3 (1998).
7. *See, e.g.*, Robert A. Mittelstaedt & Brian J. Murray, *Who Should Do the Oral Argument?,* 38 Litigation 1, 3-4 (ABA Summer/Fall 2012); David Cardone, *The Art of Cathedral Building: Why Appellate Advocacy Is Different*, 28 Pa. Law. 24, 29-30 (Apr. 2006); Jill M. Wheaton & Lauren M. London, *The Who, What, When, Where, and Why of Appellate Specialists*, 87-Feb Mich. B.J. 18, 19 (2008); Thomas G. Hungar & Nikesh Jindal, *Observations on the Rise of the Appellate Litigator*, 514 Rev. of Litig. 511, 530-31 (2010).
8. Hon. D. Franklin Arey III, *Competent Appellate Advocacy and Continuing Legal Education: Fitting the Means to the End*, 2 J. Appell. Prac. & Process 27, 28, 30 (2000).
9. *See, e.g.,* American Acad. of Appellate Lawyers, *Statement on the Functions and Future of Appellate Lawyers*, 8 J. App. Prac. & Process 1, 11-13 (2006); Hon. Aldisert, *supra* note 1, at 473.

10. Hon. Robert R. Baldock, Hon. Carlos F. Lucero, & Hon. Vicki Mandell-King, *What Appellate Advocates Seek from Appellate Judges and What Appellate Judges Seek from Appellate Advocates,* 31 N.M. L. Rev. 256, 267, 274 (2001).
11. Hon. Margaret D. McGaughey, *May It Please the Court – Or Not: Appellate Judges' Preferences and Pet Peeves About Oral Argument*, 20 J. Appell. Prac. & Proc. 141, 152 (2020).
12. Hon. Arey, *supra* note 8, at 30-31 (quotation marks omitted).
13. Hon. Silberman, *supra* note 6, at 3.
14. Nillam A. Sanghvi & Bruce P. Merenstein, *Appellate Lawyers Learn to Play Well With Others,* 12 Del. Lawyer, fall 2013; *see, e.g.*, Hungar & Jindal, *supra* note 7, at 511-29.
15. *See, e.g.,* Twenty Eagle, https://twentyeagle.com/; New York Appeals, nysappeals.com; Columbia Law School, Appellate Litigation Clinic, https://www.law.columbia.edu/academics/experiential/clinics/appellate-litigation-clinic.
16. Hon. Aldisert, *supra* note 1, at 447.
17. Hungar & Jindal, *supra* note 7, at 525.
18. American Acad. of Appellate Lawyers, *supra* note 9, at 12.
19. Hon. Aldisert, *supra* note 1, at 456.
20. Hungar & Jindal, *supra* note 7, at 533.
21. Roberta G. Mandel, *Understanding the Art of Appellate Advocacy: Why Trial Counsel Should Engage Experienced Appellate Counsel as a Matter of Professional Responsibility and Legal Strategy*, 81 Appellate Practice (Fla. Bar. Assoc. Mar. 2007) (quoting Chief Justice William Rehnquist and Justice Thurgood Marshall).
22. Hon. Lawrence W. Pierce, *Appellate Advocacy: Some Reflections From the Bench*, 61 Fordham L. Rev. 829, 834 (1993).
23. Arey, *supra* note 8, at 35; see *id*. at 35-37.
24. Mandel, *supra* note 21 (quoting Hon. Gary Farmer, Florida Fourth District Court of Appeal); Mittaelstaedt & Murray, *supra* note 7, at 3 (quoting Hon. Thomas Ambro, U.S. Court of Appeals for Third Circuit).
25. Jennifer S. Carroll, *Appellate Specialization and the Art of Appellate Advocacy*, 74 Fla. Bar J. 107 (June 2000).
26. Hon. Aldisert, *supra* note 1, at 456.
27. *See* Mayer Brown LLP, Federal Appellate Practice 282-83 (BNA Books 2008).
28. Hon. Fred I. Parker, *Appellate Advocacy and Practice in the Second Circuit*, 64 Brook. L. Rev. 457, 460 (1998).
29. Mayer Brown LLP, *supra* note 27, at 281 (quoting interview with Chief Justice John G. Roberts); *see, e.g.,* Silberman, *supra* note 6, at 4; Parker, *supra* note 28, at 460, 462; Hon. Pierce, s*upra* note 22, at 836.
30. Scott A. Chesin & Rory K. Schneider, *How To Write & File an Effective Amicus Brief*, N.Y.L.J. Aug. 24, 2015, https://www.law.com/newyorklawjournal/almID/1202735249202/.
31. Mauet, Trial Techniques and Trials, *supra* note 4, at 14.
32. Arey*, supra* note 8, at 38-39.
33. Hon. James L. Robertson*, From the Bench: Reality on Appeal*, 17 No. 1 Litigation 3, 6 (1990).
34. *See* Mayer Brown LLP, *supra* note 27, at 442-43, 458.
35. *Id.* at 442.
36. Hon. Parker, s*upra* note 28, at 458.
37. Committee on Appellate Skills Training, *Appellate Litigation Skills Training: The Role of the Law*, 54 U. Cin. L. Rev. 129, 137-38 (1985).
38. *See, e.g.,* Wheaton & London, *supra* note 7, at 20.


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# Fair, Foul, or Simply Unconstitutional?: Redux on Enforceability of Personal Guaranties During COVID

By Katharine S. Santos and D'Shandi Coombs


The COVID-19 pandemic triggered a cascade of legal challenges, particularly concerning the enforceability of personal guaranties on commercial leases in New York City. In response to the economic hardships businesses faced, the New York City Administrative Code § 22-1005 ("Guaranty Law") was enacted, effectively barring landlords from enforcing personal guaranties on certain commercial leases during a specified blackout period between March 7, 2020, and June 30, 2021.[1] While this regulation aimed to protect businesses, particularly small ones, from the devastating financial impacts of the pandemic, it has also raised significant legal questions of the regulation's fairness to landlords. In 2021, the landmark case *Melendez v. City of New York* brought these issues to the forefront when the U.S. Court of Appeals Second Circuit conducted a balancing test to determine if the Guaranty Law violated the Contracts Clause of the U.S. Constitution, and identified five features of serious concern which precluded dismissal.[2] On remand, the U.S. Court for the Southern District Court of New York concluded that the regulation did not constitute a reasonable and appropriate means of advancing the City's legitimate public purpose and was thus unconstitutional.[3]

This article serves as a redux of an article appearing in the May 2022 issue of this magazine,[4] providing an updated analysis of how New York state courts have since addressed the law, the evolving judicial reasoning, and what stakeholders can expect moving forward. Through an examination of recent case law, we will explore whether the enforcement of personal guarantees during the pandemic remains fair, foul, or simply unconstitutional.

## Constitutional Crossroads

The reasoning behind the federal courts' refusal to enforce the Guaranty Law on constitutional grounds is compelling. One of the Second Circuit's central concerns was the law's permanent impairment of contractual obligations. The federal appellate court was particularly troubled by the fact that the Guaranty Law "does not simply defer a landlord's ability to enforce a personal guaranty; it forever extinguishes it," which the court found to be a severe and disproportionate measure,

even during a crisis.[5] This permanence contrasted sharply with the temporary nature of the public health emergency that justified the law's enactment, ultimately tipping the scales against its constitutionality.[6] As Justice Arlene Bluth of the Supreme Court, New York County opined: "this Court sees no reason to depart from the extremely well-reasoned and logical determination made in *Melendez*. That this issue may be considered by various trial and appellate courts in the future if of no moment. Plaintiff should not have to wait around indefinitely based on the premise that some other case may break in defendants' favor."[7]

Nonetheless, the federal district court's decision on remand finding the regulation unconstitutional in *Melendez* has not been uniformly adopted in the New York state courts.[8] Some state court decisions have sidestepped the issue, whereas others have imposed stringent procedural burdens on litigants attempting to make constitutionality a linchpin of their case under the Guaranty Law. This has left commercial landlords and tenants in a precarious position, as the legal landscape remains unsettled, and the fate of the Guaranty Law continues to be a contentious issue.

## Timing Is Still Everything

The Appellate Division, First Department decision in *Tamar Equities Corp. v. Signature Barbershop 33 Inc.* declared "we need not and do not address the parties' constitutional arguments," and instead focused on how the timing of tenant defaults interacts with the law's protections. [9]

The First Department in *Tamar Equities* addressed a critical question: whether the Guaranty Law's protections apply to rent defaults that began within the timeframe of the Guaranty Law but did not become due until outside of the Guaranty Law period. The landlord sought to enforce a guaranty for rent that accrued after the Guaranty Law's protection period had ended. The tenant had abandoned the premises during the protection period without landlord's consent, and the landlord pursued the guaranty for unpaid rent accruing in the months following this departure.[10]

In *Tamar*, the court ruled that the Guaranty Law does not provide indefinite protection to guarantors and that landlords can enforce guaranties for rent accrued after June 30, 2021, when the protection period ended.[11] This decision underscores that the Guaranty Law's impact is temporally limited, ensuring that landlords retain the right to recover unpaid rent for periods beyond the statute's defined timeframe. The court's decision was crucial because it distinguished between defaults that occurred during the protection period and rent obligations that arose afterward.

The appellate court made it clear that the Guaranty Law's protections are not absolute and do not indefinitely shield guarantors from all obligations under a lease. Based on prior precedent, the First Department ruled that "the statute bars enforcement only for defaults occurring within the protection period," thereby allowing the landlord to enforce the guaranty for each monthly rental obligation as it became due after June 30, 2021.[12] This decision emphasized that while the law provides substantial protections for tenants and guarantors during a specific timeframe, it does not offer a permanent escape from all rental obligations. The importance of *Tamar Equities* lies in its clear delineation of the Guaranty Law's temporal scope. This ruling provides landlords with a clearer pathway for recovering rent that accrues after the protection period, offering some balance in a legal landscape heavily tilted in favor of tenants during the pandemic.

## Misinterpretations and Misapplications: How Tenants and Guarantors Misread the Guaranty Law

Separate and apart from the law's constitutional validity, numerous guarantors and tenants have sought to interpret the Guaranty Law in ways that expand its protections beyond the intended scope. These interpretations often misalign with the law's actual language and restricted purpose. In *Knickerbocker Retail LLC v. Bruckner Forever Young Social Adult Day Care Inc.*, the Appellate Division, First Department clarified that the Guaranty Law does not extend protection to circumstances outside the three categories identified in the regulation itself.[13] Those categories are limited by the scope of the Executive Orders they reference, and unless a commercial tenant is covered by those Executive Orders, the regulation "does not apply" to defendant guarantors. By a careful reading of the Executive Orders themselves, the Court determined that the commercial tenant – in this case, an adult daycare center – fell outside the scope of the Guaranty Law.[14]

*Triad 11 E., LLC v. Midoriya, Inc.* demonstrates another attempt to broaden the application of the Guaranty Law. In this case, defendants, a commercial tenant and its personal guarantor, argued that their specific circumstances – operating a grocery store and deli – qualified them for the protections of the Guaranty Law.[15] Defendants claimed that their business was forced to close or modify its operations under Governor Cuomo's Executive Order 202.3.[16] Construing the Executive Order literally and in accordance with its terms, the First Department affirmed the lower court's refusal to dismiss the Complaint on the basis of the Guaranty Law, holding that "defendant tenant ran a grocery store and deli, which did not fall within the category of businesses covered by Administrative Code § 22–1005 or Executive Order 202.3 – that is, establishments that served food for consumption on the premises."

Thus, as stated in the previous *NYLitigator* article on this topic: "due to the specific limitations of the executive orders it references, Section 22-1005 therefore applies mainly to restaurants, bars, gyms, fitness centers, movie theaters, non-essential retail stores, barber shops, hair salons, nail salons, tattoo or piercing parlors and related personal care services in New York City during the height of COVID-19."[17] Landlords in *Knickerbocker* and *Triad* both achieved victory by demonstrating that the Guaranty Law could not be expanded to cover the defendants in those cases. The Courts' decisions, and presumably the briefs that engendered them, made no mention of constitutional concerns.

## Foul Pursuit: The Constitutional Argument Falls Short

The evolving legal landscape surrounding New York City's Guaranty Law underscores the importance of strategic navigation rather than constitutional confrontation. One of the most significant procedural hurdles arises from the requirement set forth in cases like *513 West 26th Realty LLC v. George Billis Galleries, Inc.*, where the Appellate Division, First Department directed Plaintiff to serve notice on the City of New York under CPLR 1012(b)(2) so that the City could intervene in support of the Guaranty Law's constitutionality.[18]

Challenging the Guaranty Law on constitutional grounds thus can be a risky strategy. For landlords, a requirement to invite the City to join the suit adds an unwelcome layer of complexity and delay to the litigation process. To save all parties the time and frustration, practitioners can instead focus on the nuances of statutory interpretation, particularly concerning the specific timing of defaults and the limited reach of the law to only those tenants affected by certain executive orders. The judiciary has shown a preference for resolving disputes on these narrower grounds, allowing courts to avoid thorny constitutional questions.

In light of these post-*Melendez* legal developments, Landlords must now adapt their strategies. The key to success lies in carefully navigating the precise limitations of the law with respect to scope and timing. By doing so, practitioners can better advocate for their clients within the established legal framework, achieving resolutions that are both predictable and equitable in a post-pandemic landscape.

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### Endnotes

1. NYC Admin. Code § 22-1005.
2. *Melendez v. City of New York*, 16 F.4th 992, 1038-46 (2d Cir. 2021).
3. *Melendez v. City of New York*, 668 F. Supp. 3d 184, 199, 207 (S.D.N.Y. 2023).
4. Katharine Santos and David Yu, *Fair or Foul?: NYC's Regulation Barring Enforcement of Personal Guaranties for COVID-Era Rents*, NYLitigator, vol. 27, no. 1 (Spring 2022).
5. *Melendez,* 16 F. 4th at 1004.
6. *Id.* at 1038.
7. *Judson Realty LLC v. Hayward Luxury, Inc.*, No. 159692/2021, 2024 WL 1008536, at *5 (N.Y. Sup. Ct. Mar. 08, 2024).
8. *43 Orchard Realty LLC v. Baruch Chicken LLC*, No. 655760/2021, 2023 WL 8272817, at *1 (N.Y. Sup. Ct. Oct. 09, 2023) ("The decision in *Melendez* does not bind the courts of New York State,") (Lebovits, J.).
9. *Tamar Equities Corp. v. Signature Barbershop 33 Inc.*, 223 A.D.3d 421, 425 (2024).
10. *Id.* at 422.
11. *Id.* at 424
12. *Id.* at 424 (internal quotations and citations omitted).
13. *Knickerbocker Retail LLC v. Bruckner Forever Young Social Adult Day Care Inc.*, 204 A.D.3d 536, 538 (2022).
14. *Id.*
15. *Triad 11E., LLC v. Midoriya, Inc.*, 216 A.D.3d 540 (2023).
16. *Id.* at 541.
17. Santos & Yu, at p. 14.
18. *513 West 26th Realty LLC v. George Billis Galleries, Inc.*, 220 A.D.3d 525 (2023)

# Foreign Entities and Individuals Listing in New York, Beware: Commercial Division Reiterates That Alleged Manipulation of New York Financial Markets Subjects a Foreign Company and Its 'Primary Actors' to Specific Jurisdiction

By Jason Little

It is no secret that New York is one of the world's top financial centers, with a large contingent of domestic and foreign entities and individuals that touch within New York's borders either directly or indirectly. Some of these entities have no physical connection to New York, save for issuing distribution shares on New York's stock exchanges, attending the IPOs and transacting with New York banks. These entities are otherwise foreign entities with foreign places of business, and with officers and directors that are citizens of foreign states and countries. What redress do shareholders have then in New York when foreign officers or directors of foreign entities are alleged to have committed fiduciary breaches? More particularly, where those officers and directors have transacted business using New York markets for their own benefit, is New York a proper jurisdiction for a shareholder derivative suit?

In *Matter of Renren, Inc.*,[1] the First Department answered the question affirmatively, holding under the circumstances that the foreign entity and individual defendants had used and manipulated New York markets in a manner that subjects them to New York's jurisdiction under its long-arm-jurisdiction statute. The question was again addressed in the Commercial Division's recent decision in *Oasis Investments II Master Fund v. Mo*[2] (the "Oasis Action"). There, the Hon. Andrew Borrok, reiterated that claims brought on behalf of a derivative defendant for alleged director and shareholder fiduciary breaches that are alleged to stem from manipulating New York's financial markets are subject to specific jurisdiction under New York's long-arm statute.[3]

## The Relevant Oasis Parties

To understand the gravity of the Oasis Action decision, it is necessary to understand the parties and their connection, or lack thereof, to New York. The plaintiff, Oasis Investments II Master Fund LTD. ("Oasis"), is a company incorporated under the laws of the Cayman Islands that carries out investment management activities through two primary advisors based in Hong Kong and Austin, Texas.[4] Plaintiff, Lorelei NCC Inc. (LNI) is a company incorporated under the laws of the State of New York, which carries out investment activities from New York.[5] Both Oasis and LNI held shares or beneficial interests in nominal defendant, Fang Holdings Limited ("Fang").

Fang is at the epicenter of the Oasis Action, and as noted below is alleged to have been manipulated in a series of transaction for the benefit of defendants, Vincent Tianquan Mo ("Mo") and Richard Jiangong Dai ("Dai") for self gain and in breach of their fiduciary duties. Fang is incorporated in the Cayman Islands and alleges to have its principal place of business in China.[6] Mo and Dai are each citizens of the People's Republic of China (PRC).[7] Mo is alleged to be Fang's controlling shareholder either directly or through entities he owns and/or controls, and Dai is alleged to be, at various times an officer, director and chairman of Fang.[8]

China Index Holdings Limited (CIH) is alleged to have been a wholly owned subsidiary of Fang. It is alleged that CIH was spun off and reacquired by Fang in the below noted series of transactions that benefited Mo and Dai individually, and not Fang and its shareholders.

## Oasis Brings Suit in New York Against, in Part, Fang, Mo and Dai

Oasis initiated the Oasis Action on May 30, 2023, derivatively on behalf of Fang against, in part, Mo and Dai alleging that they engaged in a fraudulent scheme to enrich themselves, in breach of their fiduciary duty, by manipulating the New York financial markets at Fang's expense.

The genesis of the alleged fiduciary breaches is an alleged multi-step transactional manipulation (the "Transactions"), conducted by Mo and Dai summed up as follows:

- **Step 1:** In 2019, Mo and Dai returned to New York to spin off the American distribution shares (ADS) of Fang's subsidiary, CIH, on the NASDAQ. As a result of the spin-off, Mo and Dai received the ADS shares on a pro rata basis.
- **Step 2:** Mo and Dai caused Fang to purchase the ADS shares from Mo's and Dai's affiliates at a higher market value. Mo and Dai also caused Fang to buy the China Index Holdings Limited shares in the New York market.

- **Step 3:** Fang (at the direction of Mo and Dai) failed to provide mandatory SEC financial reporting. It is alleged that this failure was motivated by Mo and Dai wanting Fang to be delisted from the New York Stock Exchange. It is alleged that Mo and Dai used a prior action in the Cayman Islands, which sought to wind up Fang as the basis to "go dark," but that this prior matter was resolved in mid-2021, while Fang was not delisted until 2022.
- **Step 4 & Step 5:** Mo and Dai used the artificially depressed market to buy back CIH's ADS shares. At the direction of Mo and Dai, Fang offered a private transaction to buy out CIH's minority investors.

## Fang, Mo and Dai Challenge New York's Jurisdiction

Between November 30, 2023 and December 1, 2023, Fang, Mo and Dai each brought motions to dismiss the Oasis Action under CPLR 3211 (a) (8), asserting that New York does not have personal jurisdiction since Oasis cannot satisfy New York's long-arm statute because Oasis cannot show that Fang transacted business in New York, and that there is a "substantial relationship" between the transacted business and the claim asserted.[9] Fang, Mo and Dai also assert that New York's exercise of personal jurisdiction over it would not comport with due process because it lacks the minimum contacts with New York.[10]

As synthesized by the Court, Fang contended that there is no articulable nexus between the claims asserted by Oasis and Fang's transaction of business in New York, namely its IPO on the NYSE and CIH's listing on NASDAQ, because: (1) any connection between those actions and Oasis' claims are too attenuated; (2) that the buyback of CIH shares was done in accordance with foreign agreements; and (3) the take-private action was a Cayman Islands action with insignificant New York ties.[11] Fang also argued that its New York communications and payments to JP Morgan Chase in New York were ministerial, legal and logistical requirements.[12]

Mo and Dai each argued that New York does not have personal jurisdiction because they are PRC citizens and do not have sufficient minimum contacts with New York. Specifically, Mo and Dai argue that Oasis has not sufficiently alleged that their status as shareholders and as directors of Fang.

## The Court Finds It has Personal Jurisdiction Over Fang, Mo and Dai

### (a) No General Jurisdiction Over Fang, Mo or Dai

Before addressing New York's long-arm statute, the Court began its analysis under CPLR 301, which permits the Court to exercise general jurisdiction over a defendant whose ties to New York "'are 'so continuous and systematic' as to render them essentially at home in the forum state.'"[13] For Fang, barring a showing of exceptional circumstances, its place of general jurisdiction is its "'place of incorporation and [its] principal place of business.'"[14] The Court held that Fang is a Cayman Islands company that does not have a principal place of business in New York, and that there were no exceptional circumstances plead by Oasis to change that calculus. The Court therefore held that it does not have general jurisdiction over Fang. Similarly, the Court noted that for Mo and Dai the "'paradigm forum for the exercise of personal jurisdiction is the individual's domicile.'"[15] Because Mo and Dai are PRC citizens and do not maintain residences in New York, the Court declined to exercise general jurisdiction over them.

### (b) Specific Jurisdiction Over Fang Under CPLR 302 (a)

After thorough reasoning, however, the Court did find that it had specific jurisdiction over Fang under New York's long-arm statute, CPLR 302 (a).

The Court began its analysis by reiterating the familiar standard that "[a] New York court may exercise personal jurisdiction over a non-domiciliary defendant where (i) the court has long-arm jurisdiction over the defendant pursuant to CPLR § 302 and (ii) the exercise of such jurisdiction comports with the strictures of due process."[16]

The Court reasoned that New York's long-arm statute, "[t] his is a "single act statute," meaning that "proof of one transaction in New York is sufficient to invoke jurisdiction."[17]

With respect to the due process requirement, the Court reiterated that to align with due process, "a defendant must have sufficient minimum contacts with New York such that the defendant should reasonably expect to be hauled into court here, and that requiring the non-domiciliary to defend the action in New York comports with "traditional notions of fair play and substantial justice.""[18]

As for Fang's actions in the Oasis Action, the Court held that jurisdiction over Fang in New York is proper because the transactions at issue involved significant contacts in New York such that "there is an articulable nexus or substantial relationship between the transactions and the claim asserted." The Court's rationale was simple – the Transaction was not merely a spin-off as Mo and Dai suggested, but rather Mo and Dai used the series of transactions summed up above to "use[] and manipulated New York markets for their own benefit."[19] It was not lost on the Court that Fang was listed on the New York Stock Exchange, had issued and distributed shares in the United States as part of its IPO and had engaged in depository banking transactions with JP Morgan. In so deciding, the Court analogized the facts of the Oasis Action to *Matter of Renren, Inc.*,[20] where the individual defendants similarly were alleged to have manipulated the New York markets by using a multi-step transaction designed to strip *Renren* of its most valuable assets for their individual benefit.[21]

### (c) Specific Jurisdiction Over Mo and Dai Under CPLR 302 (a) (1)

Similarly, the Court also held that it had specific jurisdiction over Mo and Dai under New York's long-arm statute.

The Court began its analysis by identifying the "critical issue" to the exercise of jurisdiction over Mo and Dai as outlined by *Renren* – whether Mo and Dai were "primary actors" with respect to the Transactions and Fang's business in New York. The Court opined that where Fang was determined to engage in purposeful activities in New York concerning a transaction "with the knowledge and consent of the defendant, the court has personal jurisdiction over a defendant by virtue of the corporation's activities where the defendant benefited from the transaction and exercised some degree of control over the corporation in relation to the transaction."[22] To meet this standard, Oasis was not required to establish a formal agency relationship between Mo and Dai and Fang. Oasis need "only convince the Court that [the] Company engaged in purposeful activities in this State in relation to [the] transaction for the benefit of and with the knowledge and consent of the . . . defendants and that they exercised some control over [the] Company in the matter."[23] With respect to control, the Court held that the "'the plaintiff must allege in sufficient detail that the defendant was a primary actor in the subject transaction."[24]

"To satisfy the element of control" the Court noted that Oasis "must allege in sufficient detail that the *defendant was a primary actor in the subject transaction*."[25]

The Court held that Mo and Dai were primary actors because the record shows that Mo and Dai orchestrated and consummated the Transaction for their own benefit. The Court made particular note of Mo and Dai's connection as primary actors to the Transactions by enumerating that (1) Mo and Dai came to New York to ring the bell on the day of Fang's IPO, (2) "Mo and Dai personally signed allegedly misleading Fang securities filings," and (3) "Mo owned between 71% to 85% of the voting power in Fang during the relevant periods." With respect to the Transactions themselves, the Court was clear that these were the same types of New York

market manipulation that was held by *Renren* to subject the individuals to satisfy both New York's long-arm statute and the notions of due process. To the later, the Court also held that New York was a convenient forum for the litigation.

## The Takeaway

The message for foreign entities and individuals who use New York's financial markets is clear – if you are alleged to have manipulated those markets in a manner that raises civil claims, then you will likely be subject to New York's jurisdiction.

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### Endnotes

1. *Matter of Renren, Inc.*, 192 A.D.3d 539 (1st Dep't 2021).
2. *See Oasis Investments II Master Fund Ltd. v. Mo*, 82 Misc.3d 1242(A), Index No. 652607/2023 (Sup Ct, N.Y. Co. May 2, 2024).
3. *See* N.Y. CPLR 302.
4. *See Oasis Investments II Master Fund Ltd. v. Mo*, Index No. 652607/2023 at Doc. No. 1, par. 18.
5. *Id.*, Doc. No. 1, par. 19.
6. *Id.*, Doc. No. 1, par. 26.
7. *Id.*, Doc. No. 1, par. 20.
8. *Id.*, Doc. No. 1, pars. 20, 24.
9. *Id.*, Doc. No. 71.
10. *See Oasis Investments II Master Fund Ltd. v. Mo*, 82 Misc.3d 1242(A), *5.
11. *Id.*
12. *Id.*
13. *Id.* at *6 (quoting *Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 US 915, 919 (2011) (quoting *International Shoe Co. v Washington*, 326 U.S. 310, 317 [1945]).
14. *Id.* (quoting *Daimler AG v Bauman*, 571 US 117, 137 (2014)).
15. *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v Brown*, 564 U.S. at 924).
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* (citing *Matter of Renren, Inc.*, 192 A.D.3d 539).
21. *Id.*
22. *Id.* (citing *Retail Software Servs., Inc. v Lashlee*, 854 F2d 18, 21-22 (2d Cir 1988).
23. *Id.*
24. *Id.* (quoting *Coast to Coast Energy, Inc. v Gasarch*, 149 A.D.3d 485, 487 (1st Dep't 2007)).
25. *Id.*

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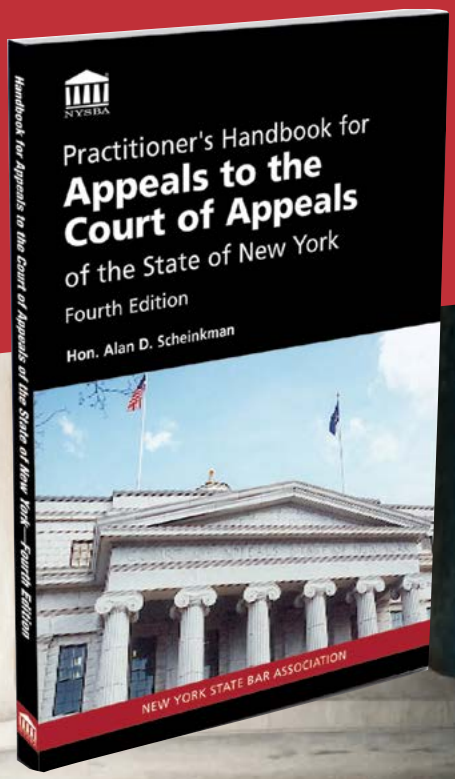


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