

Greenbaum Litigators Win Important Appeal in Third Circuit

April 2, 2013

Alan S. Pralgever, with support from **Gary L. Koenigsberg**, recently won a significant victory in the U.S. Court of Appeals for the Third Circuit on behalf of our client GF Princeton, LLC. The firm represents GF Princeton in an ongoing ground lease rent dispute with Herring Land Group over commercial property in Ewing, New Jersey.

The Court's ruling in *GF Princeton, LLC/Texttron NJ vs. Herring Land Ground, LLC* (Nos. 12-2228, 12-2357) affirmed a March 2012 District Court decision disallowing the payment of ground rent for a 5-year period (2006-2011) for which Herring Land Group was claiming approximately \$5.5 million. The trial in District Court had been divided into two phases—appraisal methodology and damages. In the methodology trial, the Court agreed with GF Princeton's appraisal methodology, under which ground rent would be determined by taking into account existing improvements made by GF Princeton. Herring had espoused a methodology that would appraise the land "as if" vacant and developed with structured parking. The Court rejected Herring's methodology in favor of that put forth by our client.

The second phase of the trial focused on GF Princeton's damages over allegations that Herring breached the ground lease by failing to comply with the appraisal process. The Court found that Herring's inequitable conduct made it inappropriate for them to collect any ground rent for the 2006-2011 time period. The Court further affirmed the admission of testimony of a real estate broker on GF Princeton's behalf, based on the broker's "present sense impression" that Herring's conduct tortiously interfered with and delayed GF Princeton's ability to find suitable tenants to rent the improvements.

The firm's successful efforts in this case saved GF Princeton millions of dollars in claimed ground rent, with the Court essentially "punishing" Herring for failing to participate in the contractually mandated appraisal process. The decision represents a complete victory for GF Princeton.

Mr. Pralgever is a partner in the firm's Litigation Department and concentrates his practice in several areas including corporate, partnership and medical practice dissolutions, and corporate and business disputes. Mr. Pralgever also handles employment discrimination matters, wills and estate litigation (an area in which he has litigated extensively in New Jersey), divorce matters, and real estate and corporate lending disputes. Mr. Pralgever has also long been involved in construction law and related areas, about which he has written and lectured extensively, representing owners, general contractors, and public institutions such as school boards.

Mr. Koenigsberg, counsel in the firm's Litigation Department, focuses his practice in the areas of close corporation shareholders disputes, construction litigation, insurance litigation and personal injury and

product liability litigation.

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