



## Recent Real Estate Representations

- We represent **KB Home** in connection with litigation and an arbitration relating to the development of the "Inspirada" community in Henderson, Nevada. Our ongoing representation includes litigating claims with lenders over the terms of a \$585 million credit facility, claims under completion guarantees and other alleged security interests and claims between members of the development consortium.
- More than a week after trial began, after having no prior involvement in the case, we stepped in and assumed the role of lead trial counsel representing a Southern California **developer** of open-air "lifestyle" shopping centers against the nation's second largest mall developer. Our client had brought claims against the mall developer for interference with prospective business relations based on threats the mall developer allegedly made against a prominent nationwide restaurant chain to discourage the chain from becoming an anchor tenant in our client's new shopping center across the street from the super-regional mall owned by the defendants. Over the next handful of weeks, we conducted most of the witness examinations and handled closing argument and the punitive damages phase of the trial. The jury awarded our client the full amount of compensatory damages requested -- \$74 million, and an additional \$15 million in punitive damages, for a total award of \$89 million. The mall developer is currently appealing the judgment.
- In a commercial lease dispute in which we represented the plaintiff and cross-defendants, we obtained a unanimous jury verdict of nearly \$3 million dollars for fraud and breach of contract, as well as a complete defense verdict on the cross-complaint. The jury's verdict included a finding of fraud, oppression or malice and, on the morning of the punitive damage phase of the trial, the case settled for an amount in excess of the verdict. Prior to trial, our client offered a substantial payment to settle the case.
- We represented **Triple 5 Corporation** in a dispute with the Simon Property Group over the Mall of America. We prevailed after a two-week trial in Minnesota.
- We represented **Hot Creek Developers** in a breach of contract action against the Town of Mammoth Lakes. It was for breach of a statutory development agreement under CA law executed in 1997. Our client had agreed to invest millions of dollars to improve the infrastructure at the Mammoth Yosemite Airport. In exchange, our client received the right to construct a 250 unit hotel and residential condominium project on 25 acres at the airport, along with an option to purchase the property. In 2004, the Town told our client that the project could not proceed and the option to purchase would not be recognized because of objections by the FAA pursuant to the Town's FAA grant assurance contracts. Because satisfaction of FAA grant assurance

objections was not a condition of the contract, this was a repudiation and breach. The jury agreed and awarded our client \$30 million.

- We represented **K. Hovnanian Homes** in a two-week arbitration against Schumacher/60th and Monroe Partners, LLC in a dispute arising from a land purchase contract. We prevailed and the arbitrator ruled that Schumacher failed to meet pre-closing milestones, which excused K. Hovnanian's obligation to close, and awarded K. Hovnanian not only its deposit back, but attorney's fees and costs incurred.
- We represented **Playa Vista**, a master land developer in Southern California, in a dispute with a well-known real estate developer in which the real estate developer sought almost \$700 million in damages for breach of a series of land purchase agreements. With an early motion *in limine*, the judge excluded the vast majority of the claimed damages, and the case settled shortly thereafter for a nominal amount.
- We have represented **Fannie Mae** in numerous real estate disputes, from multi-family developments to large single-family and commercial mixed developments. As an example, we currently represent Fannie Mae in a large dispute involving an apartment complex that has been impacted by a landslide and other events that has required the property to be vacated and has led to insurance claims and issues with the owner that involve tens of millions of dollars. We have represented Fannie Mae in disputes involving allegations of pollution of water in areas covered by developments on which Fannie Mae provided loans and in other matters involving mortgage-backed securities. We have won or resolved all our Fannie Mae matters on business terms better than those set at the beginning of the case by our client.
- We represented **Packaging Advantage Corporation**, the leading manufacturer of hospitality sized soap, shampoo, etc. in the nation, in a case against its landlord over our client's lease of a manufacturing campus in Southern California. The landlord sought a declaration that the manufacturing company had breached the lease so that the landlord could evict the manufacturer and redevelop the property or, at a minimum, terminate the manufacturer's option to extend the lease to 2014 on favorable terms. We prevailed after a three-week trial.
- We represented an **NFL football stadium** in a highly publicized dispute with an NFL franchise that leased the stadium. The case involved a breach of the lease between the team and the stadium, the intention of the team to move to a new stadium in a nearby city, and complex damages and mitigation issues relating to the unique use and development potential of the stadium property. We obtained a recovery of nearly \$30 million for our client.
- We represented a real estate developer in a two-week trial against a civil engineering firm. The jury awarded the developer \$4.5 million and found that the engineering firm had engaged in intentional fraud warranting punitive damages. The engineering

firm agreed to settle before the punitive damages phase, for the full amount of the verdict, plus interest, and all costs and fees that the developer incurred.

- We represented public company home builder **TOUSA** in connection with a \$675 million claim brought by Deutsche Bank based on the default of an off balance sheet structured financing used to fund the largest acquisition of home sites in Florida history. We obtained a successful resolution to this matter.
- We represented an individual plaintiff in a real estate development suit against his civil engineering company over their failure to properly and timely perform their contractual obligations, breach of an oral contract, and fraud. We were substituted in as counsel after the case had been going on for two years. Inexplicably, there had been no motion practice, so there were a number of significant legal issues that had never been briefed or litigated. We won on a breach of written contract claim and on a fraud claim, even though the written contract had a limitation of liability provision. The jury awarded more than \$4 million in damages.
- We represented **People's Choice Mortgage** and obtained summary judgment of class claims in the millions of dollars based upon allegations of lender misconduct against a lender from which People's Choice purchased a significant number of mortgages which it then packaged into mortgage-backed securities.
- We represented a developer in a dispute with a sub-developer and obtained an injunction to prevent property from being sold at auction.
- We represented **Kmart** in a multi-million dollar lease dispute with the landlord of one of Kmart's Northern California Stores. We obtained dismissal of the case with prejudice, on the eve of trial.
- We represent **Poe Development** against another major developer in a dispute over the development of a 5-stage project in the Santa Clarita Valley that involves a mixed development of thousands of homes, together with commercial and retail space. The dispute centers on allegations that the defendant developer failed to discharge its duties in moving the project to conclusion and in acquiring water for the project, at the same time when the defendant was using money for the development in pursuing other projects and was improperly making loans to itself at inflated rates while failing to take advantage of available loan facilities in the marketplace at much lower rates, thus violating its fiduciary duties by appropriating to itself most of the profits from the project.
- We represented a major developer and obtained favorable settlements in several cases involving high-rise mixed-use developments in and around downtown Los Angeles.

- We negotiated a 90 percent reduction in cost of improvements sought by the City of Rancho Mirage placed on approvals for the development of property by Landmark Land Company.
- We represented **KYOWA Building Company** in a lawsuit related to the sale of a large parcel of Beverly Hills real estate and a sanitary landfill in Hawaii, in a case involving complex issues related to securities transactions and disclosure laws. We obtained a very favorable settlement.
- We obtained a settlement on behalf of our developer-client for one-tenth of one percent of the compensatory damages of \$10,000,000 claimed by the plaintiffs for flood damage in Riverside County, California.
- We represented a secured lender in foreclosing on a \$300 million office project.
- We are representing a client involved in a breach of lease case with Bear Sterns, with potential damages exceeding \$500 million.
- We represented a **Zurich Re subsidiary** in connection with its provision of funding to a real estate partnership, which invested in condos and coops in New York, after the controlling partner of that entity died and it was discovered that he engaged in fraud.
- We have represented several major developers in significant class action/product liability cases involving almost \$1 billion in total claims. The key partners in these representations have never had a class action certified against their clients and sustained on appeal.
- We represented a major Beverly Hills property developer in a dispute over the ownership of prime development land in that city. The issues revolved around whether partners had been improperly excluded from participating in the opportunity. Our client was adverse to those claims, and alleged in response that one of the purported partners -- an attorney -- had breached his duties to our client and was thus properly excluded from the opportunity. We prevailed in the trial court before the jury was even empanelled, and the appellate court affirmed that ruling in a published decision.
- We represented **IBM** in a real estate dispute brought by several developers who claimed that IBM breached a contract for sale of land, by allegedly failing to assist the developers in obtaining a zoning variance from the City Counsel. We won a dismissal of the fraud claim on summary adjudication, and, after filing several key motions *in limine*, settled the case favorably on the first day of trial.
- We represented **U.S. Filter Wastewater Group, Inc. and United States Filter Corporation**, both subsidiaries of Vivendi, in defending claims of breach of contract and fraud. Plaintiff alleged that U.S. Filter breached an agreement to assign to

plaintiff an option to purchase certain real estate from another party. We obtained summary judgment, and the court granted our clients the substantial majority of their costs and attorney's fees.