

Matthew Fiorovanti: Litigation Emerging as Negotiating Tool in Real Estate

It appears as though the COVID-19 pandemic will come to an end in the relatively near term. Even if it lingers, it seems as though attorneys and litigants have adapted and figured out how to work efficiently, Fiorovanti said.

By Charles Toutant

For Matthew Fiorovanti, who represents developers and land owners at Giordano, Halleran & Ciesla in Red Bank, the hot real estate market has brought about a resurgence in parties' use of litigation as a negotiating tool.

Litigants who have spent a lot of money obtaining land use approvals can find it frustrating to face an adversary seeking to change its negotiating stance with a breach of contract claim, said Fiorovanti.

As a partner focusing on complex business and commercial litigation, Fiorovanti handles rent disputes, breakups of partnerships and corporations and contractual disputes. He also defends attorneys and accountants in professional liability disputes and provides representation in development approvals and assists clients with affordable housing litigation and compliance.

Fiorovanti, who attended Cornell University and Fordham University School of Law, recently paused to discuss his work, and his answers were minimally edited.

First, what sort of matters do you generally deal with in your practice?

I am a partner in the commercial litigation department, which generally focuses on business disputes, including partnership and corporate disputes. A large part of our firm's practice is representing real estate owners and developers, and I represent those owners and developers in connection with any litigation that may arise, whether as a result of contracts falling through or in connection with challenges to land use approvals in prerogative writ actions. I also represent broker dealers in disputes with customers and other securities firms in FINRA securities arbitrations.

What's the biggest litigation trend you're seeing right now?

The economic growth, particularly in the real estate market, has led to circumstances where parties to a transaction may feel that changes to the market have changed their positions and whether they got a good deal. Because of the rapid changes, parties may view litigation as a way to either change



Courtesy photo

Matthew Fiorovanti of Giordano, Halleran & Ciesla.

their respective positions through a breach of contract claim or keep the terms of the deal through actions through an action to specifically enforce a contract. The trend seems to be towards using litigation as a negotiating tool—an old trend, but one used to a greater extent given the market conditions. The same holds true with partnership disputes—partners viewing their relationships differently depending on their own ever-changing economic circumstances.

Sophisticated parties are aware of the costs associated with litigation, both in terms of time and money. If a party believes that its adversary would rather capitulate on the terms

of a transaction in some fashion rather than engage in an all-out litigation war, then the party may feel that bringing a claim may result in a better outcome. This can be frustrating on litigants who feel as though they have already spent considerable resources in either negotiating a contract or applying for and obtaining land use approvals, only to face further litigation. So long as there is a colorable claim asserted, and the bar is typically low, parties faced with such lawsuits will have to perform that very same economic calculus to determine how to achieve their own desired outcome.

What's the biggest lesson you learned as a litigator in 2020 and 2021?

Certainly, attorneys who may not have been tech savvy before 2020 had to learn fast. From a litigation perspective, given the delays and backlogs that resulted from COVID-19-related shutdowns, litigators had to become more proactive in moving their cases and in getting creative to attempt to resolve disputes. Because the time and expenses associated with litigation increased, it became more important to emphasize this fact to clients in considering how to achieve the best possible economic result, which is always the end goal.

What opportunities do you see for your practice in 2022?

Because of the uncertainty in the economy overall, and the expected increases to interest rates and costs generally, the real estate market will

likely spawn more litigation in 2022. This will present opportunities to assist property owners and developers in securing approvals so that projects can begin, and in litigating whatever contract disputes may arise.

What are the major threats to your practice, and what are you doing to adjust?

The threats to my practice likely mirror the threats to the economy in general. We continue to try to provide legal services efficiently and successfully, so that a client faced with litigation is confident that our firm can assist in reaching the best possible economic result.

Fortunately, it appears as though the COVID-19 pandemic will come to an end in the relatively near term. Even if it lingers, it seems as though attorneys and litigants have adapted and figured out how to work efficiently. The greater concern will likely be the unknown impacts of rising prices and interest rates and how that will impact the real estate market, which tends to drive much of our practice. If there is an economic contraction, perhaps parties will think twice about spending resources towards using litigation as a negotiating tool, and prioritize spending elsewhere. But litigation tends to ensue when parties are unhappy with their situation, which could be exacerbated in a downturn.

Is there any aspect of your work that is particularly satisfying to you? If yes, how?

There are instances when you come up with a creative, unique

argument and apply it to the facts of a given case, and convince a court to accept it. Those instances are particularly satisfying, since the successful assertion of “out of the box” arguments justify the client’s decision to engage you to represent their interests.

Who had the greatest influence in your career that helped propel you to your present role?

Michael Canning, the head of our commercial litigation department, and my mentor at the firm, has had the greatest influence in not only teaching me how to substantively evaluate the merits of a case, but in how to conduct yourself as a professional. You certainly want to win and take strong positions, but do so in a professional way that respects not only the litigants involved, but your adversary attorneys as well. In addition, I try to learn from every attorney that I work with. Every attorney has a different style and ability, and different ways to be successful. Even in the most contentious cases, I try to “take the good” from each attorney so that I can more fully develop my own abilities.

