

Hon. Elizabeth H. Emerson



Elizabeth H. Emerson was first elected as a New York State Supreme Court Justice in 1996 and served for 28 years, including four years as an Associate Justice of the Appellate Term of the Appellate Division of the Second Department for the 9th and 10th Judicial Districts. In 2002, she leveraged her extensive corporate law experience to establish the Suffolk County Commercial Division and presided for 21 years, making her one of the longest serving commercial division justices in New York State. Justice

Emerson presided over numerous complex commercial cases and was instrumental in helping craft the policies, procedures and rules of the Commercial Division as an appointee to the Commercial Division Advisory Council. She previously served on the Chief Judge’s Task Force on Commercial Litigation in the 21st century.

Before her appointment to the bench, Justice Emerson maintained a transactional practice as a partner at Shearman & Sterling. She represented financial institutions and Fortune-100 companies in complex domestic and cross-border transactions, across industries like acquisition financings, leveraged buyouts, restructurings, project finance, public offerings and municipal financings.

Justice Emerson’s expertise in commercial litigation makes her exceptionally well-qualified to assist parties in resolving disputes through arbitration, mediation and serving as a special referee or moderator. Justice Emerson is also available to design and lead training workshops on a variety of topics.

Justice Emerson currently serves as a member-at-large on the Executive Committee of the Commercial and Federal Litigation Section of the New York State Bar Association and as a co-chair of the Suffolk County Bar Association’s commercial division committee. Justice Emerson recently served as the American Bar Association’s business court representative and was recently selected to represent the State of New York in a program entitled “Judicial Leaders in Climate Science.” Justice Emerson also lectures frequently on topics related to complex litigation and has authored the chapter on secured transactions in the multi-volume treatise, Commercial Litigation in the New York State Courts.

Areas of Expertise:

- BANKING
- BUSINESS ENTITIES
- BUSINESS DISSOLUTIONS
- BUSINESS TORTS
- COMMERCIAL DISPUTES AND CONTRACT MATTERS
- CORPORATE GOVERNANCE
- EMPLOYMENT MATTERS

- INSURANCE
- MERGERS AND ACQUISITIONS
- PROFESSIONAL PARTNERSHIP DISPUTES
- REAL ESTATE
- SECURED TRANSACTIONS
- SECURITIES
- SHAREHOLDER DERIVATIVE CLAIMS
- TRADE SECRET AND UNFAIR COMPETITION CLAIMS

Representative Cases:

Arbitration:

- *Fritch v. Bron*, 74 Misc.3d 1217(A), 161 N.Y.S.3d 756 (2022). The court determined the scope of an arbitration clause in the context of a claim of unfair competition between and among competitors and a breach of fiduciary duty and related claims between partners.
- *Bromberg & Liebowitz v. O'Brien*, 72 Misc.3d 1221(A), 150 N.Y.S.3d 897 (2021). The matter involved a question of the applicability of an arbitration clause in the context of the acquisition of a professional practice.
- *New Brunswick Theol. Seminary v. Van Dyke*, 60 Misc.3d 1222(A), 110 N.Y.S.3d 496 (2018). Enforcement of a FINRA arbitration award notwithstanding claims of lack of jurisdiction and due process.

Banking:

- *Nebari Natural Resources Credit Fund I, LP v. Speyside Holdings LLC*, 74 Misc.3d 1217(A), 161 N.Y.S.3d 756 (2022). The court denied injunctive relief that sought to preclude the sale of UCC Article 9 collateral, including without limitation, the sale of the equity interests of several entities in connection with the defaults under a mezzanine loan facility.
- *Saltini v. North Sea Dev. LLC*, 64 Misc.3d 1239(A), 118 N.Y.S.3d 372 (2019). The court determined the question of the nature of the relationship between lenders in a structured financing to acquire real property, including finding that no special circumstances existed that would convert an arm's length relationship into a fiduciary relationship.
- *Aquila v. Rubio*, 51 Misc.3d 1217(A), 38 N.Y.S.3d 830 (2016). The court analyzed the enforceability of several loans represented by promissory notes against claims of forgery, lack of capacity, unconscionability, undue influence and usury.
- *Kaplan v. Valley National Bank*, 52 Misc.3d 1210(A), 41 N.Y.S.3d 719 (2016). The court granted a motion to dismiss the complaint against Valley National Bank and Fidelity National Title Insurance Company in connection with distributions under two family trusts. Plaintiff had asserted nine causes of action including claims under Article 4 of the UCC.
- *Margot J. Garant Inc. v. Suffolk County National Bank*, 46 Misc.3d 1218(A), 17 N.Y.S.3d 383 (2015). Dismissal of plaintiff's claim for reimbursement from defendant Suffolk County

National Bank based on transfers that she authorized from her IOLA account pursuant to fraud committed by a third party. The decision includes an analysis of defendant bank's obligations under Article 4 of the UCC.

- *Lambro Indus., Inc. v. Chai Found., Inc.*, 69 Misc.3d 1223(A), 135 N.Y.S.3d 628 (2020). Court granted summary judgment in favor of the defendant in connection with claims that the sole shareholder of a corporation was restricted from transferring shares upon death

Business Torts:

- *U.S. Bank N.A. v. Kahn Prop. Owner, LLC*, 64 Misc.3d 1236(A), 118 N.Y.S.3d 369 (2019). Opinion dismissed a third-party complaint and included a discussion of a series of alleged business torts in the context of the foreclosure of a syndicated loan facility, including without limitation, tortious interference with contract, tortious interference with business relations, breach of fiduciary duty, breach of the covenant of good faith and fair dealing and conversion.
- *Doukas v. Ballard*, 39 Misc.3d 1227(A), 972 N.Y.S.2d 143 (2013). The court dismissed the complaint against defendant Ballard and certain other defendants. Ballard was the inventor, creator and distributor of biometric image recognition and remote storage technology used by banks and other financial institutions. Plaintiff made claims based on his allegations of the formation of a joint venture. Plaintiff's claims which included replevin, conversion, fraud, breach of fiduciary duty and constructive trust were dismissed by the court.
- *Auerbach v. Klein*, 19 Misc.3d 1102(A), 859 N.Y.S.2d 901 (2008). The court granted summary judgment in connection with claims of breach of fiduciary duties by the officers and directors of companies whose principal assets were cellular telephone licenses. The court based its decision in part on the application of the Business Judgment Rule and the lack of evidence to support a claim of tortious interference with prospective business relations in connection with decisions to adopt a program of surrender and get with respect to various licenses.

Contracts:

- *Global Facility Mgt & Constr., Inc. v. Joe & The Juice Miami LLC*, 63 Misc.3d 1230(A), 63 Misc.3d 1230(A), 115 N.Y.S.3d 615 (2019). The court determined breach of contract claims and the availability of liquidated damages in connection with a written agreement.
- *Misty Cleaning Serv. Inc. v. Independent Group Home Living Program, Inc.*, 66 Misc.3d 1209(A), 120 N.Y.S.3d 709, 2020 WL 217727 (2020). The court interpreted specific language under New York law.
- *Town of Huntington v. Long Is. Power Authority*, 60 Misc.3d 1222(A), 110 N.Y.S.3d 497 (2018). The court considered claims of third-party beneficiary status in connection with a power supply contract between LIPA and National Grid in an attempt by the Town to prevent LIPA and National Grid from proceeding with tax certiorari claims in connection with various electric generating and distribution facilities on Long Island and in Brooklyn.

Employment Matters:

- *Devos, Ltd. v. United Returns, Inc.*, 57 Misc.3d 1211(A), 71 N.Y.S.3d 921 (2017). The court discussed the application of a restricted covenant in the pharmaceutical industry.
- *B.O. Technology L.L.C. v. Dray*, 40 Misc.3d 1213(A), 970 N.Y.S.2d 668 (2013). The court determined the enforceability of an employment agreement when an employee goes to work for a customer.
- *Scholem v. Arcadia Realty Ltd Partnership*, 45 Misc.3d 562, 992 N.Y.S.2d 857 (2014). The court granted summary judgment in favor of the defendant in connection with plaintiff's claim of wrongful termination after a finding of violations of defendant's policies on sexual harassment.
- *L.F. O'Connell Assoc., Inc. v. McGetrick*, 36 Misc.3d 1238(A), 961 N.Y.S.2d 359 (2012). The court granted emergency relief to protect confidential information, intellectual property, and trade secrets in connection with a full-service advertising and marketing agency specializing in higher education marketing.

Franchising:

- *Legend Autorama, Ltd. v. Audi of America, Inc.*, 32 Misc.3d 1216(A), 934 N.Y.S.2d 34 (2011). The court determined claims between and among the franchisor and the franchisee including, without limitation, claims for breach of contract, bad faith and breach of fiduciary duty.

Insurance:

- *JBGR LLC v. Chicago Title Ins. Co.*, 62 Misc.3d 313, 88 N.Y.S.3d 806 (2018). The court granted defendant's motion to dismiss in connection with the issuance of a title insurance policy that the plaintiffs' alleged failed to include certain defects to title.
- *Excess Line Assn. of N.Y. (ELANY) v. Waldorf & Assoc.*, 40 Misc.3d 759, 965 N.Y.S.2d 831 (2013). The court determined the proper regulation of certain insurance brokers under New York State law and whether a private right of action exists or whether the Department of Financial Services is the sole regulator.

Mergers and Acquisitions:

- *Castle Restoration LLC v. Castle Restoration & Construction, Inc.*, 74 Misc.3d 1208(A), 159 N.Y.S.3d 829 (2022). The court rendered a decision after trial involving a variety of issues from an acquisition of construction company including the amount and the manner of the payment of the purchase price and the terms of related consulting contracts.
- *Blackburn Food Corp. v. Ardi*, 58 Misc.3d 275, 66 N.Y.S.3d 840 (2017). The court rendered a decision after trial where the court granted specific performance in connection with an option to purchase real property but also awarded back rent in connection with a continuing landlord tenant relationship.

Real Estate:

- *Country Pointe at Dix Hills Homeowners Assn., Inc. v. Beechwood Org.*, 21 Misc.3d 1110(A), 873 N.Y.S.2d 510 (2008). The court analyzed covenants running with the land and related issues under the Martin Act, the Donnelly Act and claims of unjust enrichment, breach of fiduciary duty, fraud, and breach of contract.
- *Granfeld II, LLC v. Kohl's Dept. Stores, Inc.*, 48 Misc.3d 1210(A), 18 N.Y.S.3d 579 (2015). The court calculated damages after a finding of wrongful termination of a ground lease. The damages were calculated, in part, based on anticipated revenue from a Kohl's department store to be built on the site in question.
- *434 Suffolk Ave. Realty Inc. v. Incorporated Village of Islandia*, 41 Misc.3d 1234(A), 983 N.Y.S.2d 203 (2013). The court's decision determined potential damages under cellular telephone ground leases.

Securities:

- *Matter of Allion Healthcare Inc.*, 28 Misc.3d 1228(A), 911 N.Y.S.2d 691 (2010). The matter involved challenges to a merger agreement and related disclosures on behalf of the shareholders of Allion Healthcare. The court was called upon to decide jurisdictional issues in connection with an entity incorporated in another state but whose contacts were exclusively within the State of New York.
- *County of Suffolk v. Long Is. Power Auth.*, 38 Misc.3d 1232(A), 969 N.Y.S.2d 802 (2010). The court determined issues raised on behalf of the County of Suffolk in connection with \$620,000,000 in municipal bonds. The bonds were issued in connection with the debt owed by various municipalities in connection with the over taxation of the Shoreham Nuclear Power Plant, including claims of illegal use of proceeds, violations of the Martin Act (General Business Law Art-23-A) due to misleading disclosures in the Official Statement, and violations by Nassau County of provisions of the Clean Energy Grant specified in the Shoreham settlement agreements.

Shareholder Derivative Claims and Business Dissolutions:

- *Greenhaus v. Gersh*, 64 Misc.3d 1222(A), 117 N.Y.S.3d 462 (2019). In connection with requests for emergency relief and applications for summary judgment the court determined that the plaintiff had failed to establish their standing for failure to make a predicate demand on the company's board of directors or demonstrate that such demand would be futile.
- *Federico v. Brancato*, 43 Misc.3d 1231(A), 993 N.Y.S.2d 644 (2014). The court rendered a decision after trial which involved competing claims in connection with a shareholders' agreement and allegations of oppression, breach of fiduciary duty, breach of the duty of loyalty, and self-dealing on the part of officers and directors and remaining shareholders.
- *Bonanni v. Horizons Investors, Corp.*, 50 Misc.3d 1227(A), 36 N.Y.S.3d 406 (2016). The court rendered a decision after trial involving claims of shareholder oppression in connection with

the purported withdrawal of a minority shareholder in an entity that owned and operated MRI facilities.

Trademark and Unfair Competition:

- *JJFM Corp. v. Mannino's Bagel Bakery*, 70 Misc.3d 171, 132 N.Y.S.3d 582 (2020). The court denied claims under New York common law and General Business Law of trademark infringement and unfair competition.
- *L-3 Communications Corp v. Kelly*, 10 Misc.3d 1055(A), 809 N.Y.S.2d 482 (2005). In addition to the analysis of a restricted covenant, the case raised issues of the relationship between a corporate employer and an independent contractor and such contractor's use of proprietary information and potential disclosure of trade secrets in connection with military contracts.

Former Positions:

- Justice of the New York State Supreme Court (1996-2023)
- Commercial Division (2002-2023)
- Associate Justice of the Appellate Term for the 9th and 10th Judicial Districts (2019-2023)
- Partner, Shearman & Sterling (1992-1995)
- Associate Shearman & Sterling (1984-1991)
- Associate, White and Case (1982-1984)

Speaking and Writing:

Justice Emerson has served as a panelist or as a speaker at numerous conferences, seminars, and moot court programs. Select engagements include:

- Judge for Final Round of Statewide Mediation Competition (New York State Bar Dispute Resolution Section March 2023 and March 2024)
- Pandemic Challenges and Opportunities (New York State Bar Annual Meeting Commercial and Federal Litigation Section 2023)
- Comparative Analysis of New York and Delaware Law (New York State Bar Association Annual Meeting Commercial and Federal Litigation Section 2023)
- Corporate Successor Liability in Merger and Acquisition Transactions (American Bar Association Business Law Section 2022)
- International Law in the Courts: A Judicial Roundtable (American Bar Association International Law Section 2020)
- The Formation and Administration of Business Courts (American College of Business Court Judges 2020)
- Complex Commercial Case Management in the Post Covid Era – Business Interruption Insurance (The National Center for State Courts 2020)

- Evolving Law of Restrictive Covenants (American College of Business Court Judges 2019)
- Judge for Mock Trial (New York State Bar Association Commercial and Federal Litigation Section Project for Achieving Equity for Woman Attorneys in the Courtroom 2018).
- Keynote Speaker: Dispute Resolution between The United States and China featuring PRC Supreme Justice, Chief Judge of the Shanghai Court and Dean of the Sanghai Mediation Center (Fordham University 2017).

Justice Emerson has also taught a course on Business Law in several well-regarded MBA programs. She has also designed and implemented training programs on a variety of subjects. Justice Emerson was also responsible for certain aspects of training for lawyers within her firm and for conducting training for select corporate clients.

Published Works:

Since 2004 Justice Emerson has authored Chapter 101 on Secured Transactions in the highly regarded, multi-volume treatise *Commercial Litigation in the New York State Courts*. Justice Emerson has also authored numerous articles that have appeared in various bar publications.

Mediation Experience:

During her 21 years as a Commercial Division Judge Justice Emerson has settled numerous cases. She has also been involved in designing and implementing court-sponsored mediation programs. Justice Emerson has also participated in numerous programs that focus on mediation including Advanced Mediator Training: Civil-Commercial.

Education:

- J.D. Syracuse University College of Law, *magna cum laude*
- A.B. Boston College, *magna cum laude*