

## Marc J. Gross, Greenbaum Partner, Wins Lawsuit at New Jersey Supreme Court

May 12, 2009

**Marc J. Gross**, a partner at the Roseland, New Jersey office of Greenbaum, Rowe, Smith & Davis LLP, recently succeeded in obtaining a landmark decision from the New Jersey Supreme Court in *Township of West Orange v. 769 Associates, LLC, et al.* The Supreme Court's unanimous decision in *769 Associates* has important implications for property owners -- like Mr. Gross' client, 769 Associates, LLC -- whose real estate was targeted for condemnation. As a result of Mr. Gross' efforts, the Supreme Court decided that when a condemnation action is abandoned, fees and expenses start to accrue and should be reimbursed to the real estate owner from the time the property is initially targeted for condemnation, even if that time predates the filing of the condemnation complaint. The Supreme Court's ruling will benefit property owners throughout New Jersey who, in reality, often incur legal and other expenses from the time a public entity targets a property for condemnation. In fact, Mr. Gross' successful advocacy and the opinion that it engendered from the Supreme Court will vastly improve the rights of all real estate owners throughout New Jersey.

### *History:*

769 Associates, LLC (Associates) is the owner of real estate that was subject to condemnation proceedings instituted by the Township of West Orange. The purpose of the condemnation was to provide access to a development of single family homes proposed by a private developer, Nordan Realty. Nordan had been unable to negotiate the acquisition directly from Associates. When the condemnation action was later abandoned by the Township, Gross, on behalf of Associates, sought to recover the costs, fees and other expenses Associates had incurred in defense of the condemnation.

### *NJ Supreme Court Decision:*

The present issue before the NJ Supreme Court involved the scope of, and standard for, reimbursement of attorneys' fees, costs and expenses when the condemning authority abandons the action. The Supreme Court held, with respect to the calculation of fees, that such fees and expenses are reimbursable when they are "reasonable" and directly incurred as a result of the public entity's formal action targeting the property. In analyzing the reasonableness of the fees, the Court ruled that statute involved did not require an assessment of the success or failure of each defense pursued by the property owner, which would have meant that there would be no recovery for unsuccessful defenses. Rather, the pivotal inquiry is whether the defenses asserted were those that a reasonably skilled attorney would have advanced.

Mr. Gross, a member of Greenbaum's Litigation Department, concentrates his practice in all facets of business litigation. Mr. Gross has significant experience successfully resolving a broad range of commercial disputes and has litigated countless cases, including suits alleging the theft of trade secrets, violation of non-competition clauses, environmental contamination, franchise disputes and breach of real

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estate and other business contracts. Mr. Gross has successfully litigated cases in the Chancery and Law Divisions of the state courts in nearly every county, as well as in the federal courts in New Jersey and the Southern and Eastern Districts of New York and he has been retained as lead counsel for cases in the Northern District of California. His diversified clientele, for which he provides ongoing business counseling, include licensed professionals, closely held and publicly traded corporations and automotive, real estate and technology ventures. Mr. Gross was president of the Essex County Bar Association during the 2007-2008 term, has been selected as a N.J. Super Lawyer since 2006, and is included among the "Super Lawyers" list for the top attorneys in the country for business litigation.

In 2009 Greenbaum, Rowe, Smith & Davis LLP celebrates its 95th year of building business in New Jersey. The firm has over 100 attorneys in four main practice departments: Litigation; Real Estate; Corporate; and Tax, Trusts and Estates. The firm has offices located in Woodbridge and Roseland, New Jersey. For more information, call Erin P. Faltin at 732-549-5600 or visit the firm's web site at [www.greenbaumlaw.com](http://www.greenbaumlaw.com).

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