

Philip S. Rosen, PARTNER

Philip Rosen is a skilled, efficient problem solver who has practiced law as a commercial litigator since 1992. Phil practices in New Jersey and New York, is a member of the firm's management committee and the chair of the firm's New Jersey creditors' rights group. Phil's diverse practice includes mortgage-related litigation, foreclosures, title and real estate disputes, bankruptcy matters and assisting investors in their acquisition of performing and defaulted loan portfolios. Through his sharp and creative strategies, Phil has developed a reputation as an accomplished litigator having appeared in high-stakes litigation in courts throughout New Jersey and New York.

He is seasoned in foreclosure law having foreclosed millions of dollars in commercial and residential mortgages for banks, private equity firms and securitized servicers. Phil's experience, intellect and street smarts has benefitted clients in numerous reported decisions involving CMBS issues, challenges to the enforceability of pooling and servicing agreements, prepayment consideration and default interest provisions in commercial loan instruments, and to a lender's status as a holder-in-due course. Phil has developed long-lasting ties with his clients who rely upon his counseling in collecting or restructuring their troubled loans, and defending claims involving lender liability, statutory violations, state consumer fraud statutes and unfair business practices.

Phil regularly assists investors in their acquisition of loan portfolios including due diligence of the loan instruments, title and litigation analysis and negotiating and preparing the respective loan purchase agreements. An accredited CLE lecture by Phil on foreclosure law is available online at <https://www.nacle.com/CLE/Courses/So-Your-Commercial-Borrower-Is-In-Default-Protecting-your-Security-Interest-1087> (<https://www.nacle.com/CLE/Courses/S-Your-Commercial-Borrower-Is-In-Default-Protecting-your-Security-Interest-1087>). Building on his creditor's rights work, Phil also has deep experience in many aspects of commercial litigation including the Uniform Commercial Code, collection of book accounts and bankruptcy related litigation including stay relief motions; preference and fraudulent transfer claims; dischargeability objections and adversary proceedings.

Some of Phil's representative matters include:

- *Martins v. Nationstar Mortgage, LLC*, 2017 U.S. Dist. LEXIS 52712 (D.N.J. Apr. 6, 2017), New Jersey District Court dismissed complaint alleging wrongful foreclosure, fraud, conspiracy and related tort-based claims.
- *Lau v. Bank of America, N.A.*, 2017 U.S. App. LEXIS 5291 (3rd Cir. March 27, 2017), United States Third Circuit affirmed district court's dismissal of complaint alleging lender liability, predatory lending and violations of state consumer fraud statutes.





OUR TEAM

- A.A. Action Collection Co. v. TD Bank, et al., 2015 U.S. Dist. LEXIS 130747 (D.N.J. 2015), New Jersey District Court granted TD Bank summary judgment dismissing complaint alleging that the bank had negligently accepted hundreds of checks with forged indorsements. The Court held that the complaint was pre-empted by the UCC and precluded by its three-year statute of limitations.
- Edwards v. Countrywide Home Loans, Inc., 2012 N.J. Super. Unpub. LEXIS 2831 (N.J. App. Div. December 28, 2012), New Jersey Appellate Division affirmed dismissal of complaint alleging lender liability, violations of state consumer fraud statutes and failure to comply with pooling & servicing agreement.
- Bank of America, N.A. v. Princeton Park, 2012 N.J. Super. Unpub. LEXIS 2470 (N.J. App. Div. November 8, 2012), New Jersey Appellate Division affirmed summary judgment against commercial borrower alleging lender had modified the loan through a continuous course of conduct between the parties.
- Freedman & Gerstein, LLP v. Bank of America, N.A., 2010 U.S. Dist. LEXIS 130167 (D.N.J. 2010), New Jersey District Court dismissed complaint alleging fraud and violations of federal and state consumer statutes.
- McKenna v. Bank of America, N.A., 2010 U.S. Dist. LEXIS 74874 (D.N.J. July 26, 2010) New Jersey District Court dismissed complaint alleging fraud, negligent misrepresentation and loan rescission.
- Keys v. Union Planters, 578 F. Supp. 2d 629 (S.D.N.Y. 2008), Southern District of New York dismissed complaint by published decision finding claims against bank barred by preclusionary legal doctrines.
- Feltman v. Granite State Ins. Co., 2008 Bankr. LEXIS 4351 (D.N.J. Bankr. March 5, 2008), New Jersey Bankruptcy Court granted insurer's motion to compel document production, attendance at deposition and for contempt sanctions.
- Challenger v. Experian Info. Solutions, Inc., 2007 U.S. Dist. LEXIS 20246 (D.N.J. March 22, 2007), New Jersey District Court dismissed complaint alleging FDCPA, TILA and FCRA violations.
- East Coast Office Systems Inc. v. Citicorp Vendor Finance, Inc., 2006 WL 3257091 (D.N.J. 2006), New Jersey District Court dismissed putative class action against bank alleging fraud, conspiracy and violations of various federal and state statutes.
- Norwest Bank Minnesota v. Blair Road Associates, L.P., 252 F. Supp. 2d 86 (D.N.J. 2003), New Jersey District Court granted summary judgment to securitized servicer holding, in a seminal decision, that prepayment consideration clauses in commercial loan documents are presumptively enforceable.
- Citibank, N.A. v. Balarin, 647 N.Y.S. 2d 972 (2nd Dept. 1996), New York Appellate Division, Second Department, by published decision affirmed dismissal of complaint alleging wrongful foreclosure, fraud and negligent misrepresentation.