



Nicholas B. Malito

Partner

nmalito@foxrothschild.com



New York, NY

Tel: 212.878.7915

Fax: 212.692.0940

Nicholas has a multifaceted practice, representing a range of international, national and regional clients in commercial leasing and retail property development matters and handling a wide variety of commercial litigation, including in the areas of bankruptcy, real estate and construction.

In his real estate practice, he represents retail industry clients from the inception of lease negotiations to retail store launch, drafting and negotiating commercial leases and coordinating construction issues between tenants and landlords in addition to managing complex property sales.

An experienced lawyer with the mind of a business strategist, he helps clients navigate cases before federal and state courts, and in administrative hearings and arbitration. Nicholas draws on a broad civil litigation experience to help clients manage an array of issues, including prosecuting and defending appeals, business torts, intellectual property disputes, claims for breach of contract, real estate disputes, bankruptcy avoidance actions and claims for employment discrimination.

Services

- Real Estate
- Retail Industry
- Litigation
- Financial Restructuring & Bankruptcy

Before Fox Rothschild

Prior to joining Fox Rothschild, Nicholas was a partner in the real estate practice of a regional law firm in the Northeast.

Nicholas served as law secretary to Justice Carol R. Edmead of the New York State Supreme Court and was a student law clerk to United States Bankruptcy Judge Allan L. Gropper.

Beyond Fox Rothschild

Nicholas served as pro bono counsel for a group of law professors appearing as *amici curiae* before the United States Supreme Court in the case of *Travelers Indemnity Co., et al. v. Pearlie Bailey, et al.*, 557 U.S. 137 (2009), and co-authored a brief in support of respondents, available at 2009 WL 526205.

Nicholas was a contributing author to the *Norton Annual Survey of Bankruptcy Law*.

He also served on the Advisory Board for the Bronx Irish American History Project at Fordham University.

Bar Admissions

- Connecticut
- New Jersey
- New York
- Pennsylvania

Court Admissions

- U.S. Supreme Court
- U.S. District Court, Eastern District of New York
- U.S. District Court, Western District of New York
- U.S. District Court, Northern District of New York
- U.S. District Court, Southern District of New York
- U.S. District Court, District of New Jersey

Education

- St. John's University School of Law (LL.M. in Bankruptcy, 2010)
- St. John's University School of Law (J.D., 2006)
 - Student Publications Editor, New York Real Property Law Journal
- Fordham University (B.A., 2001)

Memberships

- International Council of Shopping Centers, Member

Board of Directors

- Irish Business Organization of New York
 - Chairperson of Advisory Board (2020)
 - President (2017-2019)
 - Vice President (2016)
 - Treasurer (2014-2015)

Representative Matters

Real Estate Transactions*

- Draft and negotiate commercial leases for a *Fortune* 500 national retailer and regional tenants and landlords.
- Appeared in various federal district courts and bankruptcy courts across the country on behalf of national retailers, regional companies and local clients. Most recently represented clients in acquiring Party City, David Bridal and Tuesday Morning leases through Section 363 bankruptcy sales.
- Coordinate construction issues between tenants and landlords.
- Secured multiple business and sign variances for Dollar Tree and Family Dollar Stores, allowing locations to use larger and sometimes additional wall and pylon/monument signs in certain restricted areas. The signage variances were important to the client because an internal analysis of existing stores showed locations with larger or additional signs often generated more sales revenue.
- Managed complex sale of mixed-use properties in New York City. Prepared all corporate documents authorizing the sale.

Business Litigation*

- Represented American and European technology companies in \$10 million dispute against former owners, officers, directors, and a competing entity concerning patent infringement, false advertising, theft of corporate opportunities and embezzlement.
- Defended a student loan servicing company in a \$40 million declaratory judgment action in the Southern District of New York concerning alleged default under bond agreement with international banks. Case was settled on favorable terms.
- Represented fitness center owner against former co-owner in New York State Supreme Court to enforce covenant not to compete. Successfully negotiated settlement to compel compliance with non-compete provision.
- Represented a Chinese manufacturer in New York State Supreme Court in order to recover payment for goods sold in the United States. Achieved favorable settlement.

Bankruptcy Litigation and Financial Restructuring*

- Represented former principal and officer of debtor regarding \$54 million claim in debtor's bankruptcy case and in defense of \$31 million avoidance action in the District of Delaware. Achieved dismissal of the avoidance action and allowance of the creditor's claims against the debtor.
- Represented a corporate debtor in all phases of its Chapter 11 bankruptcy case in the Southern District of New York. Successfully confirmed the debtor's plan of reorganization.
- Represented multiple national retailers concerning the nature of their tenancy as prime tenants in a multibillion-dollar tenant-in-common real estate bankruptcy case in the District of Delaware. Obtained settlement of all claims in favor of the clients.
- Successfully defended and favorably settled bankruptcy avoidance actions and claim objections on behalf of multiple defendants in various actions in the Southern District of New York and the District of Delaware.
- Represented and advised purchasers regarding the sale of debtors' assets in bankruptcy cases in the Eastern District of New York, the District of New Jersey, and the Western District of Washington.
- Represented landlords, tenants and trade creditors in Chapter 7, 9, and 11 bankruptcy cases in the Southern District of New York, the Eastern District of New York, the District of Delaware, the District of New Jersey, the Eastern District of Virginia, and the District of Oregon. Favorably resolved the clients' claims.
- Represented a member of the official committee of unsecured creditors and attended committee meetings on behalf of client. Advised the client regarding the sale of debtor's properties.

Real Estate Litigation*

- Represent a commercial landlord on \$7.5 million in claims against its tenant for breach of the lease, damage to the premises and collection of unpaid rent.
- Defense of a real estate developer in a construction negligence action in New York State Supreme Court.
- Defense of a 61-unit co-op apartment house in New York State Supreme Court regarding a dispute with its master tenant over scope of master lease in light of building's landmark status. Successfully defended the co-op against the master tenant's attempt to obtain a temporary restraining order.
- Defended a commercial landlord in New York State Supreme Court against a real estate broker who sought a commission for a failed \$20 million sale of a shopping center. Obtained a court order dismissing all claims against the client.
- Represented a *Fortune* 500 national retailer in \$15.5 million dispute with its landlord and the landlord's lender concerning redevelopment of the shopping center. The case settled in favor of the client.
- Defended a large commercial landlord in New York State Supreme Court regarding disputes with tenants over use of the premises. Negotiated a settlement to dismiss all of the claims against the client.

Appellate Litigation*

- Represented a commercial real estate developer before the U.S. Court of Appeals for the Second Circuit in an appeal of a trial court judgment for breach of a construction contract.
- Represented a landlord in an appeal to the U.S. District Court for the Southern District of New York of a Bankruptcy Court order concerning the debtor-tenant's assumption of an unexpired lease for a non-operating store.
- Represented a lender in an appeal to the New York State Appellate Division, Second Department to overturn the trial court's decision to vacate a judgment of foreclosure.

Arbitration*

- Successfully defended a 61-unit co-op in an arbitration proceeding before the American Arbitration Association regarding a 14-year rent dispute with the co-op's master tenant.

Reported Decisions*

- *Genometrica Research Inc. v. Gorbovitski, et al.*, 2013 WL 394892 (E.D.N.Y. 2013)
 - *In re Circuit City Stores, Inc.*, 447 B.R. 475 (Bankr. E.D. Va. 2009)
 - *In re 1633 Broadway Mars Restaurant Corp.*, 388 B.R. 490 (Bankr. S.D.N.Y. 2008)
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* Results may vary depending on your particular facts and legal circumstances.

Honors & Awards

- **Selected to the "Business 100 Honoree" list by *Irish America* magazine (2019)**
- **Recipient of "The Belfast Homecoming Ambassador Medal" (2018)**
- **Selected to the "Irish Rising Stars" list by the *Irish Legal 100* (2017)**
This award is conferred by Irish Legal 100. A description of the selection methodology is [available here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.
- **Selected to the "Irish Top 40 Under 40" list by the *Irish Echo* (2016)**
- **Recipient, Business Excellence Award, Irish-American Small Business, *Irish Echo* (2014)**