

[Verdicts & Settlements]

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Michigan Lawyers Weekly

Defaulted guarantor allegedly transferred assets

Lender finds info leading to fraudulent conveyance charge, but case settles

\$600,000

In a lawsuit filed in Oakland County Circuit Court, plaintiff Sterling Bank & Trust, F.S.B. asserted that defendant guarantor Harriet M. Jasgur defaulted on her commercial loan and broke the state's fraudulent conveyance statutes by transferring assets.

When Jasgur defaulted on her commercial loan, which was issued by Sterling, the bank's attorney filed litigation for breach of contractual obligations.

Subsequent to the initial filing, information was discovered suggesting Jasgur may have been in the process of transferring as-

Type of action: Breach of commercial loan terms, fraudulent conveyance

Name of case: *Sterling Bank & Trust, F.S.B. v. Jasgur*

Court/Case no./Date: Oakland County Circuit Court; 2008-095195-CK; Jan. 27, 2009

Tried before: Facilitation

Name of judge: Mark A. Goldsmith

Name of facilitator: Tracy L. Allen

Settlement amount: \$600,000

Attorney for plaintiff: Mark C. Rossman

Attorney(s) for defendant: Withheld



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sets in violation of Michigan's fraudulent conveyance statutes.

In light of this, Sterling amended the complaint by adding a fraudulent conveyance claim. By presenting this claim, the scope of discovery was significantly expanded, and

the bank's attorney initiated discovery into the financial transactions, assets and liabilities of the defendant-guarantor.

When the matter was ordered to facilitation, the defendant-guarantor agreed to a settlement of \$600,000.

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Bank says bids for foreclosed project legitimate

Guarantors say plaintiff underbid on condo, but evidence called hearsay

\$295,000

In Wayne County Circuit Court, plaintiff-bank Sterling Bank & Trust, F.S.B. filed a breach of commercial loan terms lawsuit against Marshall Kallen, Patricia Kallen, Galaxy Builders, Inc., and Dancy Associates, LLC, the personal guarantors of a commercial loan that had been made in connection with a condominium development project in Wayne County.

Sterling filed the lawsuit against the guarantors after it had completed foreclosures by advertisement of 13 separate properties that collateralized the loan.

Shortly after the litigation was filed, the bank's counsel filed a motion for summary disposition to establish liability and damages on the ground that the deficiency amount owing by the guarantors was established, and that there were no questions of fact in this regard.

In filing this motion, the bank's counsel

was careful to provide a meticulous and strong foundation for all of the evidence submitted in support thereof so as to establish that there were no questions of fact and that protracted litigation was unnecessary.

The guarantors contested the dispositive motion, arguing that the bank substantially underbid on the properties at the sheriff's sales, and that a trial was necessary in order to establish the amount owed by the personal guarantors.

In support of their opposition to the bank's motion, the defendants submitted materials relating to allegedly comparable properties in the development that had sold for more than the amounts bid at the foreclosure sales.

The plaintiff asserted that all of the amounts bid by the bank at the foreclosure sales were commercially reasonable, as established by internal property valuations and real estate broker's price opinions obtained by the bank. Further, it was contended that all of the evidence submitted by the



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Type of action: Breach of commercial loan terms/personal guaranty

Name of case: *Sterling Bank & Trust, F.S.B. v. Marshall Kallen, et al.*

Court/Case no./Date: Wayne County Circuit Court; 2008-015985-CK; June 24, 2009

Name of judge: Kathleen MacDonald

Settlement amount: \$295,000

Attorneys for plaintiff: Mark C. Rossman, Brian M. Saxe

Attorney(s) for defendant: Withheld

Keys to winning: Aggressive summary disposition motion practice, substantiated basis for foreclosure bids

defendants was inadmissible hearsay, in violation of the rules governing summary disposition motion practice.

At the hearing the court granted plaintiff's motion. Before judgment was entered, the defendants agreed to settle for a lump sum payment of \$295,000.

Partner claims breach of partnership, fraud

Defendant disputes oral contract, denies plaintiff access to books, records

\$205,000

In a breach of partnership agreement and fraud lawsuit filed in Wayne County Circuit Court, plaintiff Mahmood Amir asserted that defendant Ahtisham Khan violated an agreement and fiduciary duties, and misappropriated partnership money.

Amir and Khan were partners with Twenty Four Seven Home Care, Inc., a home care business. Although there were no written agreements between the parties, Amir contended that he and Khan had agreed verbally and with a handshake to split the partnership's profits equally. Also, it was asserted, upon demand that Amir was entitled to have

his interested purchased by Khan.

When Amir made his initial demand for a buy-out, it was asserted; Khan denied existence of a partnership and threatened to file a lawsuit against Amir if he didn't accept \$125,000 in exchange for a release of claims. Khan also locked

Amir out of the business premises and denied him access to the books and records.

In response, Amir filed suit, along with an emergency motion for a restraining order to enjoin the destruction of corporate documents, to allow Amir access to the partnership property, and to require all financial transactions of the business be approved by Amir.

While the motion was pending, the defendant settled for \$205,000.



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Type of action: Breach of oral partnership agreement, fraud

Type of injuries: Loss of partnership profits

Name of case: *Amir v. Khan, et al.*

Court/Case no./Date: Wayne County Circuit Court; 2009-16440-CK; July 30, 2009

Name of judge: John A. Murphy

Settlement amount: \$205,000

Attorney for plaintiff:
Mark A. Rossman

Attorney(s) for defendant: Withheld

Key to winning:
Early and aggressive motion practice seeking injunction