

Weston Hurd Client News - September 2012

Maestle Persuades Court of Appeals to Reverse Half Million Dollar Judgment Against Huntington Bank as Successor in Interest to Sky Bank

On August 27, 2012, the Eleventh District Court of Appeals issued a unanimous decision reversing and setting aside a \$574,121.32 judgment against Huntington Bank as successor in interest to Sky Bank. This matter arose from alleged damages incurred during the construction of the W. Thomas James' Funeral Home. Mr. James had contracted with a company for whom his brother worked, New Horizon Building & Remodeling, Inc., to rebuild his funeral home located in Newton Falls, Ohio, following a fire which destroyed the building in 2000. The construction of the funeral home was expected to cost slightly in excess of \$1 million. To begin the construction process, Mr. James contracted with Second National Bank, Sky Bank's predecessor, and obtained a construction loan in the amount of \$690,000. The loan documents provided that before any construction loan draw could be issued to the contractor, the architect's certification for payment was needed. As the project commenced, New Horizon submitted various draw requests without the architect's certification. However, upon inspection by the bank's own appraisers, it was confirmed that the work was performed and the draw should be paid. Consequently, the bank issued payments to the contractor. Unfortunately, Mr. James became dissatisfied with New Horizon's work and terminated his contract with them. The bank had paid New Horizon approximately \$635,000 of the \$690,000 approved loan. James completed the construction of the funeral home and expended \$415,535.32 to complete the project. Thereafter, James initiated litigation against Sky Bank, who was the successor in interest to Second National Bank and the predecessor in interest to Huntington National Bank. James set forth various causes of action against the bank which alleged, in a nutshell, that the bank's disbursement of the \$635,000 in loan proceeds, without the architect's certification, was a breach of contract entitling James to damages. The trial court agreed and issued judgment for James in the amount of \$574,121.32.

Weston Hurd and Shawn Maestle were retained for the appeal. In the appeal, Maestle argued that the trial court's judgment was improper because those damages were not proved as required under Ohio law. Specifically, James had failed to prove his damages to the requisite degree of reasonable certainty; had not proven them with appropriate expert testimony and the trial court had failed to determine specifically how the architect's lack of certification proximately resulted in damages to James.

The Eleventh District Court of Appeals agreed with Maestle and Weston Hurd's position and reversed the trial court's award of damages. As had been argued, the Eleventh District held that "the purpose of damages for breach of contract is to restore the benefit of the bargain to the plaintiff by placing plaintiff in the position he or she would have been in, had it performed the contract." The court continued stating that "a party's recovery for damages is limited to 'the loss he has actually suffered by reason of the breach, and a plaintiff is not entitled to be placed in a better position than he would have been in had the breach never occurred.'" Finally, the court

stated that "a party seeking damages for breach of contract must present sufficient evidence to show entitlement to damages in an amount which can be ascertained with reasonable certainty."

As Maestle contended on appeal, plaintiff had failed to meet these various legal principles and the trial court had failed to apply them when issuing its judgment. Indeed, the funeral home, which was expected to cost slightly over \$1 million, ended up, despite plaintiff's claims of improper work by New Horizon, to cost plaintiff slightly more than \$1 million. The Eleventh District concluded that simply because plaintiff expended additional sums of monies to complete construction after he terminated his contractor, that fact did not automatically mean that those expenditures were related to the bank's alleged failure to follow its loan documents and obtain the architect's certification. Rather, Ohio law required the plaintiff to establish a direct causal link between the failure to obtain the architect's certification and the monies expended by the plaintiff. Because the trial court failed to follow the appropriate Ohio law and hold plaintiff to this burden, the Eleventh District reversed the decision and remanded the case to the Trumbull County Common Pleas Court to determine if any of the evidence plaintiff submitted at trial met the proper standard of damages as the court has set forth and recognized by Ohio law.

If you have questions or concerns about this type of matter, please feel free to contact Shawn Maestle or your Weston Hurd lawyer.

Eleventh District Court of Appeals Decision - August 27, 2012

[W. Thomas James v. Sky Bank](#)



Shawn W. Maestle is a partner with Weston Hurd LLP and is the Chair of the firm's Appellate section and a member of the firm's litigation section. He focuses his practice in the areas of appellate, commercial and real estate, as well as estate planning and probate litigation. Shawn can be reached at 216.677.3254 or SMaestle@westonhurd.com.

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