Regis A. Guerin Obtains Judgment For Bank
In Breach Of Guaranty Action And Complete Defense Verdict
On Guarantors' Cross-Complaint In Contested Trial By Reference

Regis A. Guerin obtained judgment on behalf of a Bank ("Bank") against two loan guarantors ("Guarantors"), arising out of a loan to three limited liability company Borrowers ("Borrowers") in the principal amount of $1,000,000.00 ("Loan"). Bank had foreclosed on the Property securing the Loan, and subsequently filed a lawsuit against the Guarantors for Breach of Guaranty. The deficiency amount on the Loan at the time of the foreclosure sale was approximately $392,774.82.

Guarantors and Borrowers filed a Cross-Complaint against Bank for Fraud and Equitable Estoppel, arising out of failed negotiations regarding an extension of the maturity date of the Loan, and arising out of a purported failure to provide notice of the foreclosure sale to the correct address. During the course of the litigation, Bank had obtained writs of attachment against certain assets of the Guarantors. The litigation involved numerous discovery disputes, voluminous documentation, and contested hearings prior to the matter being assigned to the Judicial Referee.

At the Trial by Reference, heard by the Honorable Justice John Zebrowski (Ret.), Bank defeated the Guarantors affirmative claims and estoppel defenses by eliciting evidence that it provided proposed Loan Extension documents to Borrowers and Guarantors, but that its efforts to have Loan Extension documents executed went ignored by Borrowers and Guarantors. Bank also showed that the notice of the foreclosure sale was properly given, to the address stated in the Deed of Trust encumbering the Property, as required by the Deed of Trust and by law. The Final Statement of Decision states as follows:

> …here the Guarantors' claims of equitable estoppel fail for a number of reasons. First, the Guarantors knew that the loan had been in default for an extended period. Second, active loan extension negotiations were in progress. However, they required the meeting of conditions by the borrower and the Guarantors. These conditions were not met. Third, [Guarantor] learned from [Bank] by September 14 that [Bank] was expecting the return of signed documents, but had not received them. Yet [Guarantor] chose to ignore [Bank's] inquiry. Fourth, in early October, approximately three weeks after choosing not to respond to [Bank's] inquiry and approximately three months before the foreclosure sale in January, [Guarantor] learned that [Bank] had filed suit to enforce the guaranties. Thereafter [Guarantor] could no longer reasonably do nothing in reliance upon an expectation of a loan extension…the foreclosure did not take place until early January, approximately three months after [Guarantor] no longer had any reasonable basis to expect a loan extension from [Bank]…it does not appear that Guarantors made any effort either to ascertain the status of foreclosure proceedings, to determine how the loan default could be cured, to take steps to cure the default, etc.…Hence, on the record presented, it was not established that [Bank] should be equitably estopped from enforcing its guaranties. Thus [Bank] is entitled to recovery of the deficiency remaining after the foreclosure.

The Judicial Referee awarded Bank the full amount of principal and interest requested $496,375.08, plus $103,896.06 in fees and costs, for a total award of **$600,272.04**. Regis Guerin, while a partner at his prior firm, Assayag Mauss, represented Bank throughout the litigation and tried the case.