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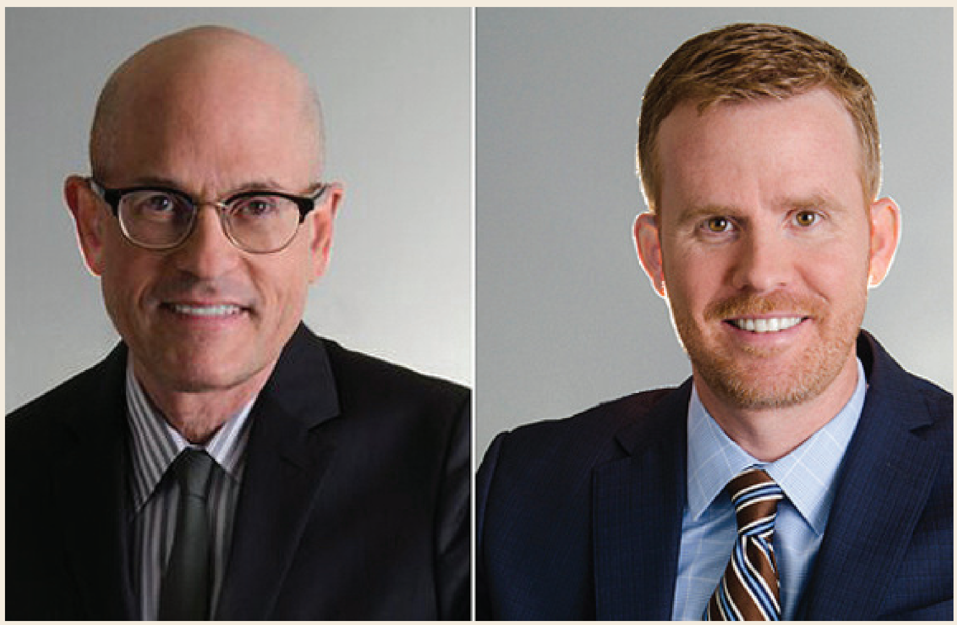
How A Miami Lawyer Collected a $3.2 Million Judgment From a Defunct Defendant

He won a $3.2 million judgment from a defunct defendant. The trick was in collecting.

Commentary by Samantha Joseph


Thomas Lehman and Jason Kellogg.

Fresh off winning a $3.2 million judgment for clients in bankruptcy, Thomas Lehman was exhilarated.

His clients, who doubted they'd ever see a dime, were far less so.

"When I told them of the wonderful victory after eight days of trial, they said, 'That's very nice, but call us when you have some money,'" Lehman said.

That call would be a long time coming. But it did come. And instead of the zero they'd expected, Lehman's clients Friday got a $1.81 million distribution, recovered from a Portuguese construction company that had shut down most of its U.S. operations following the last real estate crash.

It was no small feat. Rather than going to war with the defendant to collect on the judgment, Lehman instead convinced Miami-Dade Circuit Judge John Thornton to permit his clients to step into its one-time opponent's shoes in unrelated litigation—a move that allowed them to pursue a more than $5 million windfall.

"Everybody asked, 'Can you do this?'" said Lehman, a partner at Levine Kellogg Lehman Schneider + Grossman in Miami. "Everybody doubted me every step of the way."

Lehman's clients, Artecity Park LLC and Artepark South Development LLC, were developers of 202-unit residential project in Miami Beach. Their court pleadings paint the picture of a venture felled by an unraveling economy, a failed lender and a general contractor accused of shoddy work that led city inspectors to shut down the project.

Before construction began, the Artecity developers sold 95 of 119 condominiums planned for the project's first phase. They say the venture was on track to yield about $67 million, until general contractor Soares Da Costa CS—the target of Lehman's effort—breached its contract with slovenly work that caused city officials to shut down the construction site. Their pleadings alleged a slew of missteps, including claims Soares created weak second-story concrete floors that were 16 inches too low and a danger to occupants. They claimed costs ballooned as work halted and they terminated Soares in 2007 to hire a new general contractor.

Those rising expenses and construction delays would later come back to haunt them in a foreclosure proceeding, which eventually led them to lose the project in 2011.

The group had secured funding from Chicago-based construction lender Corus Bank, which failed in 2009 during the housing market collapse and came under the Federal Deposit Insurance Corp.'s control. Its loan would later transfer to a successor lender, Corus Construction Venture, which cited the construction delay among other defaults and sought to foreclose the $45 million debt. Until that succession, developers say they had no access to their main financial pipeline while the FDIC seized control of Corus. They filed for Chapter 11 bankruptcy protection in 2010.

"If we wanted a draw request, we had nobody to talk to," Lehman said. "There was no lending. … Our lender was a sphinx. You'd ask it questions and it sat there. … We realized the loan window was closed. Period."

When the dust cleared, unsecured creditors had a "mixed bag of litigation"—mostly duds, but Lehman saw potential for a breach of contract suit against Soares.

"We had a junkyard full of claims, but this was one that you could drive away," he said.

Except for this bump in the road: In the years between 2014, when the case went to trial, and 2011, when Levine Kellogg stepped into the litigation, Soares had gone out of business, keeping only a small U.S. operation.

But that surviving arm had won a $2.5 million judgment against South Beach Ocean Parcel II Ltd., developer of the Continuum Tower in South Beach, and stood to collect another $2.8 million in attorneys' fees and court costs.

Lehman and his partner Jason Kellogg set their sights on those funds—an intangible asset they had to persuade Thornton to order the sheriff to auction.

It "took explaining," according to Lehman, but the plan worked and the Artecity developers paid $300 to purchase Soares' judgments against South Beach Ocean Parcel. The case ended in a $3.8 million settlement, including $1.81 million for the Artecity group.

"I lived this for six years," Lehman said. "There was nothing, and I was able to give them a little something."

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