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Even on Appeal, CIB Bank Cannot Defeat Novack and Macey

APRIL 13TH, 2009

In 2005, CIB Marine Bancshares, Inc. sued a Novack and Macey client in connection with \$48.3 million in loans. The funds were provided to finance a real estate development project in downtown Chicago. CIB claimed that the firm's client signed a guarantee making him personally liable to CIB for \$40.7 million plus interest, attorneys fees and costs. Novack and Macey attorneys Michael A. Weinberg, Richard L. Miller II and Christopher S. Moore represented the client.

In June 2007, the firm moved to dismiss CIB's original complaint, identifying a variety of deficiencies within it. Without even awaiting a ruling from the trial court, CIB withdrew its original complaint and filed another. The firm then moved to dismiss CIB's amended complaint. Once again, CIB withdrew its complaint and filed yet another. Novack and Macey moved to dismiss CIB's third complaint, as well.

In its third motion to dismiss, the firm argued that another creditor-bank had a claim superior to that of CIB. Specifically, the firm explained, CIB could not collect the amounts it was purportedly owed, under the terms of the various parties' agreements, until the bank with a superior claim was paid first. CIB opposed the motion, asserting that it had the right to sue without waiting.

In February 2008, the trial court granted the firm's motion and dismissed CIB's entire case. CIB then appealed the trial court's decision, arguing it made several errors of law. On April 13, 2009, the Appellate Court of Illinois, First District, affirmed the trial court's ruling. In a 17-page order, the First District explained that CIB was a subordinate creditor that could not bring suit prior to the time the other bank, which is the superior creditor, is paid.

The firm's victorious client described the performance of Weinberg, Miller and Moore as "unbelievable and highly commendable." For further information, please contact Michael Weinberg or Richard Miller at 312.419.6900.