U.S. Supreme Court to Hear Banking Case on October 5

August 7, 2015

On July 29, 2015, the United States Supreme Court announced that it will hear argument in *Hawkins. v. Community Bank of Raymore* on October 5, 2015. Lathrop Gage LLP client Community Bank of Raymore (CBR) is represented by Greer S. Lang, Tom Stahl and Justin Nichols in the defense of this appeal, with the assistance of Stephen R. McAllister, who formerly clerked for U.S. Supreme Court Justices Byron White and Clarence Thomas and has substantial experience appearing before the Court. Resolution of this significant case for the finance industry will help shape the future application of the Equal Credit Opportunity Act (ECOA) and Regulation B to banks across the country.

From 2005 to 2008, CBR made four loans in excess of two million dollars to PHC Development, LLC, an entity formed by Gary Hawkins and Chris Patterson, Trustee of the Patterson Trust, to develop a subdivision in Peculiar, Missouri. Valerie Hawkins and Janice Patterson, the petitioners before the Supreme Court, allege that they were required to provide guaranties of CBR's loans to PHC Development solely because they are the spouses of Messrs Hawkins and Patterson. They allege that by doing so, CBR violated the ECOA and Regulation B. The U.S. District Court for the Western District of Missouri granted summary judgment in CBR's favor, finding that guarantors are not "applicants" for credit under the ECOA's unambiguous definition of that term and are thus not protected from marital status discrimination under the Act. The 8th Circuit affirmed in a unanimous decision last August, and agreed that in light of the unambiguous statutory definition of "applicant," as one who applies to a creditor directly for credit, Regulation B's contrary definition—including guarantors as "applicants"—was not entitled to deference. The U.S. Supreme Court granted certiorari to review the issue in light of a conflicting decision from the 6th Circuit, *RL BB Acquisitions, LLC v. Bridgemill Commons Dev. Group*, which held that guarantors are "applicants" within the meaning of the ECOA and Regulation B.

The question presented to the U.S. Supreme Court for consideration by this case is:

Does the ECOA's precise definition of "applicant," when given its ordinary meaning and read in the context of the statute as a whole, include a *guarantor*, who merely signs a contract in support of the borrower's application for credit, or did the Federal Reserve Board attempt to redefine impermissibly the statute's "applicant" provision when the FRB amended its implementing regulation (Regulation B) to expressly

include guarantors?

The American Bankers Association, the Independent Community Bankers of America, the Missouri Bankers Association and the Missouri Independent Bankers Association, as *amicus curiae*, have filed an amicus brief supporting CBR's position.

The briefs of the parties are available here.