



U.S. Supreme Court Affirms Decision Excluding Guarantors from ECOA Protection

March 22, 2016

4-4 Decision Keeps Issue Unresolved Outside of 8th Circuit

On March 22, 2016, the U.S. Supreme Court affirmed the decision of the 8th Circuit Court of Appeals in favor of Lathrop Gage LLP client Community Bank of Raymore ("CBR") in *Hawkins v. Community Bank of Raymore*. The CBR team of Greer S. Lang, Tom Stahl and Justin Nichols, with the assistance of Stephen R. McAllister, successfully defended the 8th Circuit's decision that the Equal Credit Opportunity Act ("ECOA") unambiguously excludes guarantors from its protection, because they are not "applicants for credit," and cannot use the ECOA to avoid liability on their guaranties.

The decision in *Hawkins* marks the Supreme Court's first 4-4 decision since the death of Justice Antonin Scalia in February 2016. Justice Scalia actively questioned and appeared skeptical of the petitioners' position at oral argument. As a result of today's affirmance of the 8th Circuit, that decision is now binding precedent for those federal courts within the geographic scope of the 8th Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota), but does not carry absolute precedential effect nationally.

From 2005 to 2008, CBR made four loans in excess of \$2 million to PHC Development, LLC. Valerie Hawkins and Janice Patterson, the petitioners before the Supreme Court, alleged that they were required to provide guaranties of CBR's loans to PHC Development (in violation of ECOA and Regulation B) solely because they are the spouses of PHC's owners. In the U.S. District Court for the Western District of Missouri, The Honorable Dean Whipple 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. 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.

As a result of the Supreme Court's decision today, the 8th Circuit decision in *Hawkins* remains the law of the 8th Circuit—but the 6th Circuit decision in *RL BB Acquisitions* remains the law of the 6th Circuit, as well. Lathrop Gage expects that today's decision will lead to additional decisions in the future from other circuit



courts of appeal which may further refine the law on this issue.

If you have questions regarding the implications of the Supreme Court's decision, you may contact Greer Lang, Justin Nichols or Tom Stahl at (816) 292-2000. Lathrop Gage will be conducting a webinar in late April to discuss the *Hawkins* decision and its implications. Once the date has been selected, information on the webinar will be available at www.lathropgage.com.