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Case Deciding the Rights of Spousal Loan Guarantors

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The United States Supreme Court will soon hear a case that will determine the rights of spousal guarantors under the Equal Credit Opportunity Act ("ECOA"), and ultimately whether creditors may require spousal guarantors on loans. Specifically, the Supreme Court will decide whether a loan guarantor is considered an "applicant" under the ECOA and thus entitled to bring suit under the ECOA against a creditor for unlawful discrimination.

The Court's decision will come in the wake of a conflict in the federal courts on the proper claimants for an ECOA suit. The conflict began after the Federal Reserve Board, the agency originally charged with overseeing the ECOA, amended Regulation B to specifically include guarantors as proper claimants to ECOA discrimination cases. Thereafter, a string of cases arose, brought by wives who had acted as guarantors for their husbands' borrowing entities. These claimants alleged that they were required to act as guarantors solely because of their spousal relationship and were therefore unlawfully discriminated against based upon their marital status and sought damages under the ECOA. The wives' argument hinges on whether they have adequate standing as guarantors to bring such claims. A summary of the applicable case law and regulatory framework is set forth below.

Equal Credit Opportunity Act (15 USC 1691) and Reg. B—Equal Credit Opportunity (12 CFR Part 1002)

The ECOA makes it unlawful for any creditor to discriminate against an applicant on the basis of race, color, religion, national origin, sex, age or marital status. The statute defines "applicant" as any person who applies to a creditor directly for an extension of credit. Congress mandated that the agency charged with overseeing the ECOA (first the Federal Reserve Board, now the Consumer Financial Protection Bureau) promulgate regulations to carry out the statute's purpose. Regulation B is the result of Congress' directive. Regulation B expanded the definition of "applicant" to specifically include guarantors (12 CFR 1002.2 (e)). This expansion has led to the debate outlined in the cases below.

RL BB Acquisition, LLC v. Bridgemill Commons Development Group, LLC (6th Circuit 2014)

In a case from the Sixth Circuit, a wife executed a personal guaranty for her husband's borrowing entity. The wife then alleged that the Bank had her sign a personal guaranty as an absolute requirement for her husband's loan.

The lawsuit claims that the guaranty was unenforceable under the ECOA and Regulation B because it was discrimination based on her marital status. The Sixth Circuit held the wife had a claim under the ECOA based on Regulation B's expanded definition of "applicant," which includes guarantors. The court found the ECOA's definition of "applicant" ambiguous, leaving room for the expanded definition found in Regulation B.

Hawkins v. Community Bank of Raymore (8th Circuit, 2014)

In a case from the Eighth Circuit, wives who were required to execute guaranties of loans made to LLCs in which their husbands had interests brought an action under the ECOA against the lender for discrimination based upon marital status. The wives claimed the guaranties were unenforceable since the lender had required them to execute guaranties based solely on their marital status, constituting a violation under the ECOA. The Eighth Circuit disagreed and claimed that the wives did not apply to the lender for credit and therefore do not qualify as "applicants" under the ECOA. The Court found that the ECOA clearly provides that a person does not qualify as an "applicant" under the statute simply by virtue of executing a guaranty.

As a result of these two conflicting opinions, the Supreme Court has decided to hear the Hawkins case and resolve the conflict. The case is likely to be heard later this year.

Although the Second Circuit (which includes New York) has not issued an opinion on this matter, it is advisable for lenders in New York to not require spousal guarantors, other than as specifically permitted under Regulation B, until the matter is resolved by the Supreme Court.

If you have any questions regarding the ECOA or Regulation B, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com or Diana Acosta at 516-357-3739 or via email at dacosta@cullenanddykman.com.

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